



**Montana Department of
ENVIRONMENTAL QUALITY**

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JAN 11 2006

Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

January 10, 2006

Phyllis D. Smith
Clerk of 10th Judicial District
PO Box 1074
Lewistown MT 59457-1074

**Re: State of Montana, ex rel. Montana Department of Environmental Quality v.
Marvin Mintyala and Sandy Mintyala, DV 2000-146**

Dear Ms. Smith or Clerk's staff:

I am enclosing the following documents to 1) return and file the fourth writ of execution, and 2) to request a fifth writ for the case referred to above:

Return of Old Writ:

- original and a copied first page of a Writ of Execution and Garnishment (issued 1/20/05);
- original and a copied first page of the Sheriff's Return of Service, along with Sheriff's notices of seizure, exempt property, and right to a hearing;
- a self-addressed, stamped envelope.

Please file the writ and the return of service and accompanying notices. Please conform and date-stamp the copied first pages of the writ and the Sheriff's Return of Service. Please send the copies back to me in the enclosed envelope.

Requesting Issuance of New Writ:

- originals of a Praecipe, Affidavit, and proposed Writ of Execution and Garnishment, with two copies; with a self-addressed, stamped envelope.

Please process this new writ as requested in the praecipe.

Thank you for your assistance. Please contact me if there are any problems with my request or if you have any questions.

Sincerely,

Norman J. Mullen

Attorney for Department
406-444-4961 voice; 444-4386 fax
nmullen@mt.gov email

encls.

c. DEQ- ENF, WUTMB-SW, chron

1 Norm Mullen
Special Assistant Attorney General
2 Montana Department of Environmental Quality
1520 E. Sixth Avenue
3 P.O. Box 200901
Helena, Montana 59620-0901
4 (406) 444-3845

5 Attorney for Department

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Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau

8 MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

9 STATE OF MONTANA ex rel.
10 DEPARTMENT OF ENVIRONMENTAL
11 QUALITY,

12 Plaintiff,

13 vs.

14 MARVIN MINTYALA and SANDY
15 MINTYALA, as individuals and as officers,
16 directors, and shareholders of Mister "M"
17 Disposal Inc., MISTER "M" DISPOSAL,
18 MISTER "M" DISPOSAL INC.,
19 LEWISTOWN LANDFILL, DOMENIC
20 MASSARI, as trustee for trust holding money
21 in SouthTrust Asset Management Co. trust
22 account # 2640000519, CUMBERLAND
CASUALTY & SURETY COMPANY, a
Florida Corporation, as beneficiary of trust
holding money in SouthTrust Asset
Management Co. trust account # 2640000519,
and SOUTHTRUST ASSET
MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding
money in SouthTrust Asset Management Co.
trust account # 2640000519,

23 Defendants.

Case No.: DV-2000-146

PRAECIPE TO CLERK OF COURT

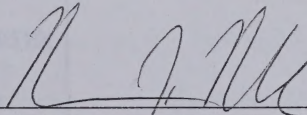
1 The State of Montana, ex rel. Department of Environmental Quality ("Department"),
2 through its counsel, Norman J. Mullen, is submitting an original proposed Writ of Execution and
3 Garnishment directed to the Sheriff of Missoula County, an affidavit supporting the issuance of
4 the Writ, two copies of the Writ, and a self-addressed, stamped envelope (SASE).

5 The Department requests that the Clerk issue the Writ of Execution and Garnishment,
6 conform the copies, file a conformed copy, and send the original issued Writ and one conformed
7 copy back to the Department in the SASE provided. The Department will then mail the Writ to
8 the Sheriff of Missoula County with a praecipe. The Sheriff's execution technician has informed
9 the undersigned attorney that the Sheriff will fill out a Notice of Execution and a Notice of
10 Seizure and Exemption Rights. The Department will supply the Sheriff with a Request for
11 Hearing. The Sheriff will then serve the papers on both the entity to be garnished and Mr.
12 Mintyala.

13 The Department requests the Court Clerk to contact the undersigned attorney with any
14 questions or comments.

15 DATED this 10th day of January, 2006.

16 STATE OF MONTANA
17 DEPARTMENT OF ENVIRONMENTAL QUALITY

18
19 By 

20 NORMAN J. MULLEN
21 Special Assistant Attorney General
22
23
24

1 Norman J. Mullen
Special Assistant Attorney General
2 Department of Environmental Quality
Legal Unit, Metcalf Building
3 P.O. Box 200901
Helena, Montana 59620-0901
4 Telephone: (406) 444-4961

5 Attorney for Department

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6
7 **MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY**

8 STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
9 QUALITY,

Case No.: DV-2000-146

10 Plaintiff,

AFFIDAVIT OF NORMAN J. MULLEN

11 vs.

12 MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
13 directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
14 MISTER "M" DISPOSAL INC.,
LEWISTOWN LANDFILL, DOMENIC
15 MASSARI, as trustee for trust holding money
in SouthTrust Asset Management Co. trust
16 account # 2640000519, CUMBERLAND
CASUALTY & SURETY COMPANY, a
17 Florida Corporation, as beneficiary of trust
holding money in SouthTrust Asset
18 Management Co. trust account # 2640000519,
and SOUTHTRUST ASSET
19 MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding
20 money in SouthTrust Asset Management Co.
trust account # 2640000519,

21 Defendants.

22
23 I, Norman J. Mullen, having first been duly sworn, depose and state as follows:

24 1. I am over the age of 18 and a resident of Lewis and Clark County.

1 2. I am the attorney for the Department of Environmental Quality (DEQ) in this case.

2 3. I am making this affidavit for the purpose of obtaining a writ of execution.

3 4. DEQ obtained a judgment in this Court on September 13, 2002, of joint and several
4 liability against several defendants, including Marvin Mintyala, totaling \$318,363.26.

5 5. Adjustments to the amount to be executed upon were necessary because \$198,000
6 was transferred on September 19, 2002, into a trust fund to partially satisfy the amount due for
7 financial assurance. Also, the judgment earned interest at 10% as authorized by law. The total
8 debt on September 18, 2003, when the first writ of execution was submitted, was \$132,856.97.

9 6. On September 18, 2003, DEQ submitted a proposed Writ of Execution to this Court,
10 which issued the writ on September 18, 2003. The Missoula County Sheriff's Office served the
11 writ on Defendant Mintyala's employer, Watkins Shepard, on September 25, 2003.

12 7. On January 22, 2004, the Missoula County Sheriff's Office sent the Department its
13 return of service on the garnishment, along with an accounting and a check for \$2,072.38.

14 8. On March 4, 2004, this Court, in response to a request from the Department, issued a
15 second Writ of Execution. The Missoula County Sheriff's Office served the writ on Defendant
16 Mintyala's employer, Watkins Shepard, on March 10, 2004.

17 9. On July 7, 2004, the Missoula County Sheriff's Office sent the Department its return
18 of service on the garnishment, along with an accounting and a check for \$3,178.39.

19 10. On July 12, 2004, this Court, in response to a request from the Department, issued a
20 third Writ of Execution. The Missoula County Sheriff's Office served the writ on Defendant
21 Mintyala's employer, Watkins Shepard, on July 21, 2004.

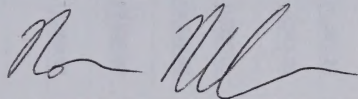
22 11. On January 12, 2005, the Missoula County Sheriff's Office sent the Department its
23 return of service on the garnishment, along with an accounting and a check for \$3,973.85.

24 //

12. On January 20, 2005, this Court, in response to a request from the Department, issued a fourth Writ of Execution. The Missoula County Sheriff's Office served the writ on Defendant Mintyala's employer, Watkins Shepard, on January 28, 2005.

13. On November 16, 2005, the Missoula County Sheriff's Office sent the Department its return of service on the garnishment, along with an accounting and a check for \$7,648.74.

14. DEQ has listed the payments, credits, costs, and interest concerning the judgment, and calculated the amount still owed, in a spreadsheet attached to this affidavit as Exhibit 1; it shows that the amount owed against the judgment is \$142,825.66. Minor changes have been made in Exhibit 1 from spreadsheets previously submitted with affidavits for writs to reflect that the judgment was partially satisfied by a set amount on September 19, 2002, and that changes in the value of the trust into which that money was deposited do not change the amount still owed on the judgment. Also, previous spreadsheets may have shown compounded interest; there is no compounding in Exhibit 1. No other payments or credits against the judgment have been made.

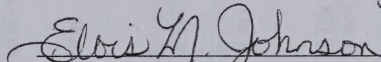


Norman J. Mullen

STATE OF MONTANA)

County of ~~Lewis & Clark~~
Broadwater

Subscribed and sworn to before me by Norman J. Mullen this 10th day of January, 2006.



NOTARY PUBLIC for the State of Montana

Elois M. Johnson

Printed name of notary

Title: Paralegal

Residing at Southend 401

My commission expires: December 26, 2009

SEAL

DEQ v. Mintyala
Case DV-2000-146
Judgment and Payments
1/10/06

DATE	DESCRIPTION	PRINCIPAL				INTEREST				GRAND TOTAL
		FEES	PENALTY	FINANCIAL ASSURANCE	TOTAL	FEES	PENALTY	FINANCIAL ASSURANCE	RUNNING TOTAL	
9/13/2002	Judgment	12,037.26	1,000.00	305,326.00	318,363.26				0.00	318,363.26
9/19/2002	Interest 9/14-19/2002				318,363.26	19.79	1.64	501.91	523.34	318,886.60
9/19/2002	Bond forfeited- money transf'd to trust			(198,000.00)	120,363.26					120,363.26
9/18/2003	principal owed/increased interest on 9/18/03 when 1st Writ of Execution requested	12,037.26	1,000.00	107,326.00	120,363.26	1,197.13	99.45	10,673.79	12,493.71	132,856.97
1/22/2004	increase in interest when sheriff returns 1st writ 9/19/2002-1/22/04 (125 days)				120,363.26	412.23	34.25	3,675.55	16,615.74	136,979.00
1/22/2004	interest owed to date					1,629.15	135.34	14,851.25		
1/22/2004	Sheriff returns Writ- \$2,155.64 - Sheriff's fees \$83.26 = \$2,072.38	(443.23)			119,920.03	(1,629.15)			14,986.59	134,906.62
3/2/2004	principal owed/increased interest when 2nd Writ Execution Requested	11,594.03	1,000.00	107,326.00	119,920.03	127.06	10.96	1,176.18	16,300.79	
3/2/2004	amounts owed when 2d writ requested					127.06	146.30	16,027.43	16,300.79	136,220.82
7/7/2004	increase in interest 3/3/2004-7/7/2004 (127 days) when sheriff returns 2d writ				119,920.03	403.41	34.79	3,734.36	20,473.35	140,393.38
7/7/2004	interest owed to date					657.53	181.09	19,761.79		
7/7/2004	Sheriff Returns Writ- \$3,256.64 - Sheriff's fees \$78.25 = \$3,178.39	(2,520.86)			117,399.17	(657.53)			19,815.82	137,214.99
7/9/2004	principal owed/increased interest when 3rd Writ of Execution requested	9,073.17	1,000.00	107,326.00		4.97	0.55	58.81	19,880.15	137,279.32
1/12/2005	amts. owed/increased interest when sheriff returns 3d writ 7/10/2004-1/12/2005 (185 days)				117,399.17	459.87	50.68	5,439.81	25,830.51	143,229.68
1/12/2005	interest owed to date					464.84	232.32	25,260.41		
1/12/2005	Sheriff Returns Writ- \$4,055.85 less Sheriff's fees \$82.00 = \$3,973.85	(3,509.01)			113,890.16	(464.84)			25,365.67	139,255.83
1/12/2005	Balances after payment by Sheriff	5,564.16	1,000.00	107,326.00	113,890.16	0.00	232.32	25,260.41		
1/19/2005	principal owed/increased interest when 4th Writ of Execution Requested					10.67	1.92	205.83		
1/19/2005	interest owed to date when 4th Writ of Execution Requested					10.67	234.24	25,466.24		139,601.31
11/16/2005	Interest 1/20/-11/16/2005 (300 days) when sheriff returns 4th writ				113,890.16	457.33	82.19	8,821.32	34,726.51	148,616.67
11/16/2005	amounts owed when sheriff returns 4th writ	5,564.16	1,000.00	107,326.00		478.67	316.43	34,287.56		
11/16/2005	Sheriff Returns Writ- \$7,731.22 less Sheriff's fees \$82.48 = \$7,648.74	(5,564.16)	(1,000.00)		107,326.00	(478.67)	(316.43)	(434.55)	33,496.86	140,822.86
	Balances after payment by Sheriff	0.00	0.00	107,326.00	107,326.00	0.00	0.00	33,853.01	33,853.01	141,179.01
1/10/2006	interest 11/16/05-1/10/06- (56 days) when 5th writ requested					0.00	0.00	1,646.65	35,499.66	
1/10/2006	Total Judgment and Interest Owning on 1/10/06-when 5th Writ Requested									

142,825.66

EXHIBIT

tabbies

1

DEQ v. Mintyala
Case DV-2000-146
Judgment and Payments
1/10/06

NOTES:

- No compounding of interest
- Simple interest accrues at 10-percent per year on the judgment
- Except for the \$198,000 received into trust on 9/19/2002, which was applied 100% to financial assurance principal owing, the monies received are credited in the following order:
 - 1st to fee interest
 - 2nd to fee principal
 - 3rd to penalty interest
 - 4th to penalty principal
 - 5th to financial assurance interest
 - 6th to financial assurance principal

1 Norm Mullen
Special Assistant Attorney General
2 Montana Department of Environmental Quality
1520 E. Sixth Avenue
3 P.O. Box 200901
Helena, Montana 59620-0901
4 (406) 444-4961

5 Attorney for Department
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7 MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

8 STATE OF MONTANA ex rel. DEPARTMENT
9 OF ENVIRONMENTAL QUALITY,

10 Plaintiff,

11 vs.

Case No.: DV-2000-146

WRIT OF
EXECUTION AND GARNISHMENT

12 MARVIN MINTYALA and SANDY
13 MINTYALA, as individuals and as officers,
14 directors, and shareholders of Mister "M"
15 Disposal Inc., MISTER "M" DISPOSAL,
16 MISTER "M" DISPOSAL INC., LEWISTOWN
17 LANDFILL, DOMENIC MASSARI, as trustee
18 for trust holding money in SouthTrust Asset
19 Management Co. trust account # 2640000519,
20 CUMBERLAND CASUALTY & SURETY
21 COMPANY, a Florida Corporation, as
beneficiary of trust holding money in SouthTrust
22 Asset Management Co. trust account #
2640000519, and SOUTHTRUST ASSET
23 MANAGEMENT COMPANY, a Florida
24 Corporation, as custodian of trust holding money
in SouthTrust Asset Management Co. trust
account # 2640000519,

Defendants.

FROM THE STATE OF MONTANA TO THE SHERIFF OF MISSOULA COUNTY:

WHEREAS, on September 13, 2002, the State of Montana ex rel. Department of
Environmental Quality obtained a judgment in the Montana Tenth Judicial District Court, Fergus
County, against Marvin Mintyala, Sandy Mintyala, and Mister "M" Disposal Inc., as follows:

1 Original or Balance Due on Judgment in the amount of: \$ 318,363.26
2 Amount of judgment for which execution issued on 9/18/03 131,556.10
3 Amount of judgment for which execution issued on 3/4/04 134,942.88
4 Amount of judgment for which execution issued on 7/12/04 136,382.53
5 Amount of judgment for which execution issued on 1/20/05 139,405.68

6 **Total sum due and owing on January 10, 2006 after credits and costs: \$142,825.66**

7 The basis for these amounts is found in the affidavit of Norman J. Mullen, which is attached to
8 this Writ.

9 NOW, you, the sheriff, are hereby required to make this sum due on the judgment or
10 damages, with interest, costs, and accruing costs, to satisfy the judgment out of the PERSONAL
11 PROPERTY and WAGES of the debtor, Marvin Mintyala, NOT EXEMPT FROM
EXECUTION on the day on which the judgment was docketed in Fergus County, or at any time
hereafter, and return this writ not less than 10 days nor more than 120 days after the date of
issuance subscribed thereon, with a record of your actions endorsed thereon.

12 Given under my hand this _____ day of _____, 2006.

13 CLERK OF DISTRICT COURT

14
15 By: _____
16
17
18
19
20
21
22
23
24

Stepp, Tim

From: Mullen, Norman
Sent: Monday, December 15, 2008 1:15 PM
To: Stepp, Tim
Subject: Contact at Wachovia for Mr. M trust

Hi Tim,

The Wachovia folks got back to me and said that the right person to talk with for getting Wachovia to amend the trust and bow out for its successor, US Bank, is Mary McCracken voice: 215-670-3739; cell: 610-955-9310 mary.m.mccracken@wachovia.com 123 So. Broad St. 9th Floor PA 1253 Philadelphia PA 19109. I called her and she said she is the right person. I told her what we were up to, and she was open to getting the forms from us. So, we have a contact.

Yours,

Norman J. Mullen
Staff Attorney
Montana Department of Environmental Quality
PO Box 200901
Helena MT 59620-0901
406-444-4961 voice
406-444-4386 fax
nmullen@mt.gov email

12/15/2008

Stepp, Tim

From: Stepp, Tim
Sent: Wednesday, June 18, 2008 10:14 AM
To: Mullen, Norman
Subject: FW: Mister M - New post-closure trust agreement/ US Bank new trustee
Attachments: PCTrustAgreement0608.doc

WOOPS IT DIDN'T ATTACH

From: Stepp, Tim
Sent: Wednesday, June 18, 2008 10:13 AM
To: Mullen, Norman
Subject: Mister M - New post-closure trust agreement/ US Bank new trustee

Norm...please review the changes to the PC trust for closed landfills.

Red are my original edits...blue new ones...and yellow what has also been fixed in the active landfill trust boilerplate.

I told US Bank that we would send this to them ASAP to execute for the change in trustee.

Thx...tim

Green = last changes per this copy

6/23/2008

TRUST AGREEMENT

Landfill Financial Assurance (FA)
Montana Department of Environmental Quality
Waste & Underground Tank Management Bureau
Solid Waste Program

Instructions: Underlines and bracketed descriptions/choices in this electronic form are a guide for editing. The trust agreement may cover multi-unit landfills or even more than one facility. It may function during the post-closure care or corrective action period as a standby trust for financial assurance mechanisms like bonds, insurance, letter of credit, etc., or it may serve as a post-closure trust to accept annual cash payments for inflation or cash to cover other increases in costs. Please note that three attachments must be provided and updated as needed: Schedule A itemizes the current annual payment and the approved current cost estimates for each landfill unit at each facility covered under the trust; Schedule B itemizes the current cash value of the trust fund and associated financial assurance mechanisms for each landfill unit at each facility; and Exhibit 1 certifies the authority of signatories for the licensee/owner/operator. Please fill in all required information and delete underlines, brackets, and all instructions or examples in italics before submitting to Solid Waste Program, Dept. of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901. Questions? - call Waste & Underground Tank Management Bureau ph. 406-444-5300.

This Trust Agreement, the "Agreement," is entered into on _____ [date] by and between _____ [name of the licensee or owner or operator], a _____ [name of State in which licensee or owner or operator was formed] _____ [insert "corporation," "LLC," "LLP," "partnership," "association," "sole proprietorship," or other type of business entity], the "Grantor," and _____ [name of corporate trustee], _____ [insert "incorporated in the State of _____" or "a national bank"], the "Trustee."

Whereas, the Montana Department of Environmental Quality, "MDEQ," an agency of the State of Montana, has established certain administrative rules applicable to the Grantor, requiring that a licensee, owner or operator of any Class II landfill or Class IV landfill or waste tire monofill shall provide assurance that funds will be available when needed to perform post-closure care or corrective action as designated in attached Schedule A, _____ Deleted: closure, _____ and

Whereas, to provide all or part of such financial assurance for the facilities identified in Schedule A, the Grantor has elected to establish a trust into which will be deposited: (1) annual cash payments for corrective action or any increases in post closure costs as designated in Schedule A; (2) proceeds from the financial assurance mechanisms designated in attached Schedule B for completion of the required actions as directed by the MDEQ Director in writing; or (3) cash payments as directed by the MDEQ Director in writing for any unpaid financial assurance obligations, and

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

- a. The term "approved" means a document that has been submitted to and evaluated by MDEQ and

determined by MDEQ in writing to meet the requirements of applicable law, rule, and this agreement.

- b. The term "Grantor" means the owner or operator or licensee who enters into this Agreement and any successors or assigns of the Grantor.
- c. The term "MDEQ Director" includes a person designated by the MDEQ director, in a notarized writing with the Department's seal ~~and attached as Exhibit 2~~ to act on behalf of the MDEQ director.
- d. The term "required action" means the performance of required ~~post-closure care or corrective action~~ duties, as designated in Schedule A, according to current plans and procedures that have been reviewed and approved by MDEQ for the landfill units and facilities identified in Schedule A, and other requirements of the license as may be amended, and applicable laws and administrative rules, as such laws and rules may be amended.
- e. The term "Trustee" means the Trustee who enters into this Agreement, and any successor Trustee.

Deleted: closure,

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and landfill units and associated financial assurance based on approved ~~and~~ current third-party cost estimates for the required actions designated in Schedule A. ~~During the post-closure care period for a landfill unit or a corrective action period at a facility, as identified in Schedule A, Grantor shall update Schedules A and B no later than April 1 of each year for any cost increases for all required actions based on changes in the facility post-closure care or corrective actions.~~ Grantor shall also update Schedules A and B as set forth in this section immediately when necessary to accomplish a required action as directed by the MDEQ Director in writing. The annual trustee fee is another cost estimate that also must be separately updated on Schedule A ~~as described in Section 11.~~

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, hereafter the "Fund," for the benefit of MDEQ. The Grantor and the Trustee intend that no third party or transferees or creditors of the Grantor shall have access to the Fund after it irrevocably vests in MDEQ except as herein provided. The Fund is irrevocably pledged by the Grantor to the Trustee for the benefit of MDEQ. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, in trust, as provided in this Agreement. The Trustee shall segregate the Fund into accounts for ~~post-closure care or~~ corrective action as designated in Schedule B for each facility identified in Schedule B. The Trustee shall not be responsible, nor shall it undertake any responsibility, for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by MDEQ.

Deleted: closure,

Deleted: and

Section 4. Payment Schedule. This trust agreement serves ~~during the landfill post-closure care (PCC) or any corrective action period~~ as a stand-by trust or a post closure trust or corrective action trust, or all three, as described in this section. Cash payments into the Fund by the Grantor to offset the costs of the annual trustee fee as designated on Schedule A must be provided prior to any period wherein cash from the Trust is intended for payment of the annual Trustee fee as indicated separately on Schedule B. The amount of cash required to pay the total current cost of trustee fees for the entire post closure period must be accrued in the Fund upon final closure for each landfill facility identified in Schedule B.

If ~~designated solely or partly~~ as a Stand-by Trust ~~for other approved financial assurance mechanisms listed in~~

(Revised 6/08)

Schedule B, the Trust will initially remain dormant until funded, as directed in writing by the MDEQ Director, with the proceeds of **such mechanisms as provided** in Schedule B. The Trustee shall have no duties or responsibilities beyond safekeeping this document while the trust remains dormant. Upon funding, the Trust becomes active and the Trustee shall administer it pursuant to this Agreement.

If the Trust is used solely or partly as a post-closure trust, **the Grantor shall make a payment into the Fund in the amount equal to the difference between the approved current total cost estimates for all required actions designated in Schedule A and the value of funds provided for each facility in Schedule B during the post-closure care period no later than April 1 of each year for any designated landfill unit.**

If this Trust is designated solely or partly as a corrective action trust in Schedule A, **the** Grantor shall, based on the cost estimates for the required actions and the funds provided for each facility, make annual payments into the Fund according to the amount and formulas identified in Schedule A no later than April 1 of each year during any designated corrective action period. **When the time left in the first half of any designated corrective action period at each facility is one year or less and if the licensee, owner, or operator has not provided an alternate mechanism for the unpaid remaining corrective-action financial assurance obligations necessary to accomplish a required action,** the Grantor shall immediately pay into the Fund the difference between one half of the approved current total cost estimate for any corrective-action and the current Fund value for any corrective action.

The trust may also serve to accept other cash payments from the Grantor as may be immediately required by the MDEQ Director in writing for any unpaid landfill financial assurance obligations necessary to accomplish any required action that could arise during post closure care or corrective actions for each facility identified in Schedule A.

The parties intend that a duty to pay into this trust is a duty under a contract for direct payment of money, that the duty must be enforced at the request of the beneficiary, and that the remedies in Title 27, chapter 18, MCA, are available.

Section 5. Payment from the Fund. The Trustee shall make payments from the Fund only as directed in writing by the MDEQ Director to provide for the costs of completing the required actions as designated for the facilities identified in Schedule A. The Trustee shall refund to the Grantor such amounts **only** as directed by the MDEQ Director in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein. **Prior to issuance of a payment by the Trustee, the Grantor must submit to MDEQ for approval a written demonstration that the total remaining funds available from all financial assurance mechanisms are sufficient to pay the remaining total approved current costs of landfill unit post-closure care and any corrective action for known releases at all facilities identified in Schedule A. Third-party contractors that complete any required action at the landfill facilities identified in Schedule B must submit invoices to the MDEQ for approval according to the requirements for completion of a specific State of Montana task order prior to payment by the Trustee from the Fund. Upon written request by the designated MDEQ signatories (Exhibit 2) for payment to the Grantor or third-party contractors, the trustee shall use one of two methods to notify MDEQ of the execution of such payments from the Fund: (1) list the date paid, party, invoice number, and amount of payment; or (2) provide a photocopy of the check that includes the invoice number on it.**

Section 6. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 7. Trustee Management. The Trustee shall invest and reinvest the principal and income of **each**

(Revised 6/08)

account for the Fund and keep amounts for each account for the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor shall communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section, Section 72-34-114, MCA, and for local governments, Sections 7-6-202 and 7-6-206, MCA. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge its duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2. (a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;
- (ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and
- (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 8. Commingling and Investment. The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one, which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 9. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States

(Revised 6/08)

Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 10. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Grantor shall pay the annual trustee fee directly to the Trustee in the amount identified by the cost estimate as designated in Schedule A. If the Grantor fails to directly pay the Trustee for the annual trustee fee, the Trustee may receive compensation from the Fund for the annual fees only if the compensation exceeds neither the cost of annual trustee payment identified in Schedule A nor the amount of cash available for trustee fees as shown on Schedule B. The trustee shall, thirty days after the annual trustee fee is due, notify MDEQ in writing of nonpayment to obtain MDEQ written approval for the amount of cash it intends to withdraw from the Fund as compensation for unpaid trustee fees owed to it by the Grantor. The cash amount allowed to the Trustee from the Fund as compensation for the unpaid annual trustee fee may be increased only after the Grantor: (1) submits to MDEQ new cost estimates documenting the increase in annual trustee fees; (2) updates and submits Schedules A and B to MDEQ and the Trustee; (3) deposits cash in the Fund to cover the full cost of the increased trustee fees; and (4) obtains written MDEQ approval for the fee increase and sends a copy of the approval to the Trustee. The Trustee must notify MDEQ in writing for approval of any proposed change in the manner by which it obtains its compensation for annual trustee fees or of any proposed change in the amount of the annual trustee fee.

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If the Grantor is a local government entity, it is not required to provide the cost estimates for trustee fees, or to pay into the Fund for the costs of trustee fee assurance. If a local government entity fails to directly pay the Trustee for the annual trustee fees, however, the Trustee may be compensated from the Fund for unpaid trustee fees only in an amount that complies with the preceding paragraph.

Section 11. Annual Valuation. At least annually and no later than April 1 of each year of activity until termination of this Trust, the Trustee shall furnish to the Grantor and to the MDEQ Director a statement confirming the value of the Trust. The Trustee shall also be subject to the reporting requirements of Sections 72-34-124 and 72-34-125, MCA. The annual statement shall separately state the value of the funds for post-closure care and corrective action for each facility as designated in Schedule B. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the MDEQ Director shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

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Section 12. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be

(Revised 6/08)

taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. If the Trustee resigns or fails to perform its duties under this agreement, and the Grantor no longer exists or fails to appoint a successor trustee within 30 days after being sent notice of the resignation by the Trustee or of the Trustee's failure to perform, the MDEQ Director may appoint a successor trustee who agrees to administer the trust. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the MDEQ, and the current Trustee by certified mail not less than 10 days before such change becomes effective.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit 1 or such other designees as the Grantor may designate by amendment to Exhibit 1. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the MDEQ to the Trustee shall be in writing, signed by the MDEQ Director, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or MDEQ hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and MDEQ, or MDEQ if the Grantor ceases to exist, except as provided for herein.

Section 15. Notice of Nonpayment. When the Trust becomes active and throughout the life of the Trust, the Trustee shall notify the Grantor and the MDEQ, by certified mail by May 10 of each year, if no payment is received or the payment received from the Grantor during April of that year is less than the annual payment amount as designated on Schedule A.

Section 16. Amendment of Agreement. This Agreement may be amended only by an instrument in writing executed by the Grantor, the Trustee, and the MDEQ Director, or by the Trustee and the MDEQ Director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the MDEQ Director or, if the Grantor ceases to exist, by the Trustee and the MDEQ Director. Upon termination of the Trust, the Trustee shall deliver all remaining trust property, less final trust administration expenses, to the Grantor if the Grantor exists. If the Grantor does not exist upon termination of the trust, the Trustee shall deliver all remaining trust property, less final trust administration expenses, to the MDEQ solid waste management account in the state special revenue fund in § 17-2-102, MCA.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the MDEQ Director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any

(Revised 6/08)

personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Montana.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

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(Revised 6/08)

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written:

[Signature of Grantor]

[Title]

[Seal]

State of _____

(County) of _____

Signed or attested before me on (date) by (name(s) of person(s)) _____

(Signature of notarial officer)

(Name - typed, stamped, or printed)

(Seal)

Title (and Rank)

(Residing at)

[My commission expires: _____]

[Signature of Trustee]

[Title]

[Seal]

Exhibit 1Landfill Financial Assurance (FA) Trust Agreement
Montana Department of Environmental Quality
Waste & Underground Tank Management Bureau
Solid Waste Program

Certification by Secretary of corporation

or

Resolution by the Board of Directors, Commission, or Council

providing authority for signatory
on trust agreement

State of _____

County of _____

On this [date], before me personally came _____ [name of person representing owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at _____ [address], that [she/he] is _____ [title (officer, manager...)] of _____ [name of licensee or owner or operator], the _____ ["corporation," "LLC," "LLP," "partnership," "association," "sole proprietorship," or other type of business entity], described in and which executed the above instrument; that she/he knows the seal of said business entity; that the seal affixed to such instrument is the seal of such business entity; that it was so affixed by order of the Board of Directors or person or body having authority to bind such business entity, and that she/he signed her/his name thereto by like order.

Notary Public for the State of _____Printed Name of Notary _____ Title or Rank _____
(SEAL)

Residing at: _____

My commission expires: _____

Exhibit 2- Date: date completed
Landfill Financial Assurance (FA) Trust Agreement
Montana Department of Environmental Quality
Waste & Underground Tank Management Bureau
Solid Waste Program

MDEQ designated signatories

 Name
 Title
 Department
 Address
 City
 State
 Zip

 Name
 Title
 Department
 Address
 City
 State
 Zip

(Revised 6/08)

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FEB 11 2009

DEQ
 W&UTMB
 Solid Waste Program

Stepp, Tim

From: Staudermann, Judy [Judy.Staudermann@SouthTrust.com]
Sent: Wednesday, February 02, 2005 9:35 AM
To: Stepp, Tim
Subject: FW: Mr "M" Disposal



SouthTrust
Amendment.doc

Hi Tim,

Well, finally I have the successor document that has been approved from our legal at Wachovia. I know that you had some additions that you felt would be necessary, feel free to make this addition to the agreement and return for my review.

Also, as a part of the transition process all account relationship must be run through a database called OFAC as a compliance part of the Patriot Act. Please provide me with the department's EIN number at your earliest convenience.

Please do not hesitate to contact me if I can be of assistance.

Regards,
Judy Staudermann
Vice President
Institutional Trust Services
800-846-8048 - Toll Free
904-798-6359 - Local
904-798-6368 - Fax

Judy Staudermann
Vice President
Institutional Trust Services
800-846-8048 - Toll Free
904-798-6359 - Local
904-798-6368 - Fax

This message is confidential and intended only for the individual named. If you are not that individual, do not disseminate, distribute or copy this e-mail. If you feel you have received this message in error, please contact the sender immediately and delete this message. Information transmitted by e-mail is not secure and may be intercepted by a third party. You may submit time-sensitive, action-oriented messages or confidential information such as social security numbers, account numbers, credit card numbers through <http://www.southtrust.com> online applications and customer service forms. SouthTrust accepts no liability for damage caused by any virus transmitted by this e-mail.

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FEB 02 2005

Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau

DRAFT

AMENDMENT

THIS AMENDMENT ("Amendment"), dated as of January 3, 2005, to the _____ Agreement dated as of _____, _____, by and between _____ (the "[Company]") and SouthTrust Bank ("SouthTrust") (the "Agreement"),

WITNESSETH, THAT:

WHEREAS, the Company and SouthTrust entered into the Agreement for the provision of certain [trust][custodial] services, as described therein, and

WHEREAS, on November 1, 2004, Wachovia Corporation acquired SouthTrust Corporation, as a result of which acquisition, SouthTrust became a wholly-owned subsidiary of Wachovia Corporation; and

WHEREAS, on January 3, 2005 SouthTrust merged into Wachovia Bank, National Association ("Wachovia"), and Wachovia was the surviving entity as a result of that merger; and

WHEREAS, the parties hereto have determined it is desirable to memorialize the succession by operation of law by Wachovia as [trustee][custodian] under the Agreement.

NOW, THEREFORE, the Company and Wachovia agree as follows:

1. As of the date of this Amendment, Wachovia is the [trustee][custodian] pursuant to the terms of the Agreement, as successor to SouthTrust, and is fully vested with all the rights, powers, duties and obligations of its predecessor thereunder, with like effect as if originally named as [trustee][custodian] therein.
2. In all other respects the Agreement is hereby ratified, affirmed and approved, except as otherwise amended hereby.

[COMPANY]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Hon. E. Wayne Phillips
Montana 10th Judicial District Judge
P.O. Box 1124
Lewistown, Montana 59457
Telephone: (406) 535-8028
Facsimile: (406) 535-6076

CLERK OF THE
DISTRICT COURT
PHYLLIS D. SMITH

2011 JUN 13 AM 11 24

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JUN 14 2011

DEPT. OF ENVIRO. QUALITY
WASTE & UNDERGROUND TANK
MANAGEMENT BUREAU

FILED
BY *Phyllis D. Smith*
DEPUTY

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC., et al,

Defendants.

Case No.: DV-2000-146

**ORDER AUTHORIZING AND
REQUIRING ENTRY ON
LANDFILL TO RECONSTRUCT
POND AND RECONTOUR
DRAINAGE**

THIS MATTER having come before the court upon the Department's Motion, and the
Court having fully reviewed this matter,

HEREBY FINDS that:

1. Defendants Marvin and Sandy Mintyala (Mintyalas) have not performed required inspections and reporting concerning the status of their landfill.
2. The Department has notified the Mintyalas of storm water problems at the Mister M Landfill, and has requested them to act to fix the problems.

1 3. The Mintyalas have not acted to fix the problems.

2 4. The Department has requested the Mintyalas' consent to allow the Department and
3 its employees and contractors to enter the Landfill to conduct work to fix the problems.

4 5. The Mintyalas did not respond to the Department's request for consent to enter.

5 6. The Department has contracted with an engineer to recommend a remedy for the
6 storm water problems, and has requested an order authorizing it and its employees, contract
7 engineer, potential bidders, and contractor to enter the Landfill to conduct first a one-day walk-
8 through and then a three week project to conduct the work for the remedy.

9 7. The Department has offered to notify the Mintyalas and this Court five days before
10 each entry.

11 8. The Department has offered to give notice if, due to weather or other unforeseen
12 circumstances, more time is needed to complete the work for the remedy.

13 9. It is reasonable for the Department's employees, its contract engineer, and potential
14 bidders to enter the Landfill property during one day in June or July 2011 for a bid walk-through.

15 10. It is reasonable for the Department's employees, its contract engineer, and
16 successful bidder/contractor to enter the Landfill property for three weeks during July and
17 August to conduct the work for the remedy.

18 11. It is reasonable to require the Department to give notice if, due to weather or other
19 unforeseen circumstances, it believes more time is needed to complete the work for the remedy.

20 Therefore, the Court CONCLUDES that:

21 1. It is appropriate for this Court to appoint the Montana Department of
22 Environmental Quality (Department) to contract to perform the work requested, and to order that
23 Department employees, bidders, and contractors may enter the Landfill property to review it
24 during a bid walk-through and then to perform that work.

2. It is appropriate to Order the Defendants to allow such entry by Department employees, potential bidders, and contractors.

It is therefore ORDERED that:

1. the Department is authorized to contract to conduct the post-closure care of the storm water control system at the Mister M Landfill that was described in the motion;

2. Department employees, contract engineer, and potential bidders may enter onto the Landfill property at 7-9 Boyd Creek Road, described as located at 7 & 9 Boyd Creek Rd., described as PT E2SW4, PT W2SE4, AS SHOWN ON COS 439, SEC. 8, T. 15N, R. 19E, in Fergus County, Montana, on one day in June or July 2011 to view the storm water control system for the purpose of preparing a bid for a contract to remedy problems with that system.

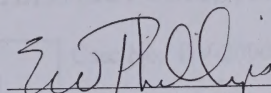
3. Department employees, contract engineer, and the successful bidders may enter onto that Landfill property for three weeks during July and August 2011 to construct the remedy for the problems with the storm water control system identified in the motion.

4. The Department shall give the Mintyalas five days' advance notice by regular mail of the entries in the two immediately preceding paragraphs.

5. If the Department believes entry during an additional period is necessary due to weather or other unforeseen circumstances, it shall give the Mintyals and this Court written notice by mail. Unless this Court orders otherwise, the entry may proceed during an additional period in July and August 2011 without additional order.

6. Defendants shall allow the entries referred to in this Order.

DONE and DATED 6/13, 2011.


DISTRICT COURT JUDGE

DEQ Metcalf Legal

MAY 24 2011

PO Box 200901

CLERK OF THE
DISTRICT COURT
PHYLLIS D. SMITH

2011 MAY 23 AM 9 45

FILED

BY Phyllis D. Smith
DEPUTY clerk

Norman J. Mullen
Special Assistant Attorney General
Department of Environmental Quality
Legal Unit, Metcalf Building
P.O. Box 200901
Helena, Montana 59620-0901
Telephone: (406) 444-4961

Attorney for Department

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC., et al,

Defendants.

Case No.: DV-2000-146

**MOTION & BRIEF FOR POST-
JUDGMENT RELIEF TO ENTER
LANDFILL TO RECONSTRUCT
STORM WATER POND AND
RECONTOUR POND DRAINAGE**

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MAY 27 2011

DEPT. OF ENVIRO. QUALITY
WASTE & UNDERGROUND TANK
MANAGEMENT BUREAU

The Montana Department of Environmental Quality (Department) hereby moves,
pursuant to the Judgment in this case and to correct and prevent violations of the Montana Water
Quality Act, for an order authorizing it and its contracted engineer and project contractor to
enter, and requiring the Mintyalas to allow entry to, the former Mister M landfill property
(Landfill) to reconstruct and recontour the storm water detention and drainage system at the
Landfill to correct problems and allow it to function properly. Currently, it is not draining

C: ENF, WUTMB-SW 5/26/11 77m

1 Norman J. Mullen
Special Assistant Attorney General
2 Department of Environmental Quality
Legal Unit, Metcalf Building
3 P.O. Box 200901
Helena, Montana 59620-0901
4 Telephone: (406) 444-4961

5 Attorney for Plaintiff

CLERK OF THE
DISTRICT COURT
PHYLIS D. SMITH

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JAN 27 2011

Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau

FILED
BY GAYLE A. DONEY
DEPUTY

8 **MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY**

9 STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
10 QUALITY,

11 Plaintiff,

12 vs.

13 MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
14 directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
15 MISTER "M" DISPOSAL INC., et al,

16 Defendants.

Case No.: DV-2000-146

**DEPARTMENT'S STATUS
REPORT - OCTOBER 2010
MONITORING WELL DRILLING
AND ABANDONMENT**

17
18 Plaintiff State of Montana ex rel. Department of Environmental Quality (Department)
19 hereby submits a status report describing the monitoring well drilling and abandonment project it
20 undertook pursuant to this court's order granting access on August 23, 2010.

21 The status report consists of the following: Affidavit of Martin Van Oort, the
22 Department's solid waste hydrogeologist, attached as Exhibit 1, and his January 19, 2011,
23 summary memorandum to the Department's attorney describing the project and results, attached
24 as Exhibit 2. These documents show that the Department's contractor completed the monitoring

C: ENF, WUTMB - SW 1/25/11 7/72

STATE OF MONTANA)
COUNTY OF FERGUS)

OFFICE OF THE SHERIFF

CLERK OF THE
DISTRICT COURT
PHYLLIS D. SMITH

STATE OF MONTANA ex rel DEPARTMENT
OF ENVIRONMENTAL QUALITY
Plaintiff

2009 DEC 9 AM 10 26
COPY FILED
BY **GAYLE A. DONEY**
DEPUTY

vs.

Docket No. DV-2000-146

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC., LEWISTOWN
LANDFILL, DOMENIC MASSARI, as trustee
for trust holding money in South Trust Asset
Management Co. trust account #2640000519,
CUMBERLAND CASUALTY & SURETY
COMPANY, a Florida Corporation, as
beneficiary of trust holding money in South Trust
Asset Management Co. trust account #
2640000519, and SOUTHTRUST ASSET
MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding money
in SouthTrust Asset Management Co. trust
account #2640000519,

Defendants

ds
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DEC 11 2009
Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau

RICK VAUGHN, being first duly sworn, deposes and says:

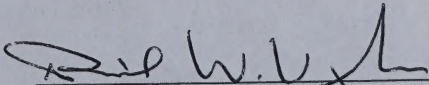
That he is a duly appointed and qualified Deputy Sheriff in
the office of the Sheriff of Fergus County, Montana, a citizen of
the United States, residing at Lewistown, Montana, and is not an
interested party in the above mentioned matter.

That on the 22ND day of OCTOBER, 2009, he posted or caused to
be posted, true and correct copies of the annexed Warrant of
Execution as follows, to wit:

7 and 9 Boyd Creek Road, Lewistown, Montana

Dated at Lewistown, Montana, this 10TH day of NOVEMBER, 2009.

THOMAS L. KILLHAM, SHERIFF


RICK VAUGHN, UNDERSHERIFF

C:ENF, WUTMB-SW 12/10/09 n/m

COPY

Hon E. Wayne Phillips
Montana 10th Judicial District Judge
P.O. Box 1124
Lewistown, Montana 59457
Telephone: (406) 535-8028
Facsimile: (406) 535-6076

CLERK OF THE
DISTRICT COURT
PHYLLIS D. SMITH

2009 DEC 9 AM 10 26

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FILED
BY GAYLE A. DONEY
DEPUTY

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal, Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL, INC.,
LEWISTOWN LANDFILL, DOMENIC
MASSARI, as trustee for trust holding money
in SouthTrust Asset Management Co. trust
account # 2640000519, CUMBERLAND
CASUALTY & SURETY COMPANY, a
Florida Corporation, as beneficiary of trust
holding money in SouthTrust Asset
Management Co. trust account # 2640000519,
and SOUTHRUST ASSET
MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding
money in SouthTrust Asset Management Co.
trust account # 2640000519,

Defendants.

Case No.: DV-2000-146

WARRANT OF EXECUTION

COPY

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF MONTANA
IN AND FOR THE COUNTY OF FERGUS

2009 DEC 9 AM 10 27

STATE OF MONTANA ex rel DEPARTMENT
OF ENVIRONMENTAL QUALITY
Plaintiff

FILED
BY GAYLE A. DONEY
DEPUTY

vs.

Docket No. DV-2000-146

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC., LEWISTOWN
LANDFILL, DOMENIC MASSARI, as trustee
for trust holding money in South Trust Asset
Management Co. trust account #2640000519,
CUMBERLAND CASUALTY & SURETY
COMPANY, a Florida Corporation, as
beneficiary of trust holding money in South Trust
Asset Management Co. trust account #
2640000519, and SOUTHTRUST ASSET
MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding money
in SouthTrust Asset Management Co. trust
account #2640000519,
Defendants

PROOF OF SERVICE BY MAIL

The undersigned certifies that a copy of the Warrant of Execution was served upon the Defendant(s) by depositing a copy thereof in the United States Mail at Lewistown, Montana on the 21ST day of OCTOBER, 2009. Enclosed in an envelope addressed to each of the Defendants at the addresses set opposite their name(s) with postage prepaid by first class mail.

NAME

ADDRESS

MARVIN MINTYALA	1265 ELM STREET #34 CLARKSTON, WASHINGTON 99403-2374
SANDY MINTYALA	1265 ELM STREET #34 CLARKSTON, WASHINGTON 99403-2374

County Fergus
Facility & # CL 302
Closure Landfarm
Finan Assur Liner
GW Corr Meas Methane
GW Monitoring O & M
GW Reports Run - On
Inspections
Other: Litigation



Montana Department of
ENVIRONMENTAL QUALITY

MEMO

ST *collier* *albes*
RECEIVED

NOV 18 2009

DEPT. OF ENVIRO. QUALITY
WASTE & UNDERGROUND TANK
MANAGEMENT BUREAU

TO: Financial Services
FROM: Melissa Levens, ENFD *mdl*
DATE: November 13, 2009
RE: **Financial Assurance Payment**

Please release the attached cashier's check in the amount of \$35,020.65 from the Fergus County Sheriff (garnished via sheriff's sale by the Fergus County Sheriff's Department – case name Mr. M Disposal) as follows:

~~Carol J. Millican~~
Account Manager
US Bank Institutional Trust & Custody
225 Water Street, ~~7th Floor~~ *Suite 700*
Jacksonville, FL 32202

The Tax ID for US Bank is 31-0841368

Information to be included in the transmittal of these Financial Assurance funds:

- Account Title: Mister M Disposal, Inc and the Montana Department of Environmental Quality
- FA Account Number: 2695000078

If you have any questions, please contact me at extension 9093. Thank you.

Attachment

cc: ENFD case file (FID #369)
Penalty payment file
Norm Mullen, Legal Unit
Ed Thamke, PCD/WUTMB
Rick Thompson/Tim Stepp, PCD/WUTMB/Solid Waste Program
Judy Hanson, PCD Division Administrator
Dave Hamer, FS Accounting Manager

NOTICE TO CUSTOMER

AS A CONDITION TO THIS INSTITUTION'S ISSUANCE OF THIS CHECK, PURCHASER AGREES TO PROVIDE AN INDEMNITY BOND PRIOR TO THE REFUND OR REPLACEMENT OF THIS CHECK IN THE EVENT IT IS LOST, MISPLACED OR STOLEN.

CASHIER'S CHECK

73881

6120
93-138/929

Fergus County Sheriff

DATE November 12, 2009

REMITTER

PAY TO THE

ORDER OF ST of MT Department of Enviromental Quality

\$ *35,020.65*



P.O. BOX 709 406/547-3331
WHITE SULPHUR SPRINGS, MT 59645

P.O. BOX 2 406/686-4204
CLYDE PARK, MT 59018

P.O. BOX 208 406/333-9009
EMIGRANT, MT 59027

1203 W. PARK 616/222-1030
LIVINGSTON, MT 59047

P.O. BOX 5509
HELENA, MT 59604

P.O. BOX 660
LEWISTON, MT 59457

35,020.65 DOL 65cts



Security
Features
Details on
Back

Andsey Williams / Carolyn
Duchnick

AUTHORIZED SIGNATURE

⑈073881⑈ ⑈092901382⑈ 4700428⑈



RECEIVED

DEC 08 2009

Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

December 7, 2009

Phyllis D. Smith
Clerk 10th Judicial District Court
PO Box 1074
Lewistown MT 59457-1074

Re: **Filing of Warrant of Execution and Sheriff's Affidavit of Posting and Proof of Service in Department of Environmental Quality v. Mintyala et al, DV 2000-146**

Dear Ms. Smith or Clerk's staff:

I am enclosing the following documents for the case referred to above:

- an original and a copied first page of a Warrant of Execution issued October 13, 2009;
- an original and a copied first page of both a Sheriff's (1) Affidavit of Posting and (2) Proof of Service.
- a self-addressed, stamped envelope (SASE).

Please file the Warrant, the Affidavit of Posting, and the Proof of Service. Please date-stamp the copied first pages and mail them to me in the SASE.

Thank you for your assistance. Please contact me if there are any problems with my request or if you have any questions.

Sincerely,

Norman J. Mullen
Attorney for Department
406-444-4961 voice; 444-4386 fax
nmullen@mt.gov

encls.

c. DEQ- ENF, WUTMB-SW, chron

Hon E. Wayne Phillips
Montana 10th Judicial District Judge
P.O. Box 1124
Lewistown, Montana 59457
Telephone: (406) 535-8028
Facsimile: (406) 535-6076

ORIGINAL

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal, Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL, INC.,
LEWISTOWN LANDFILL, DOMENIC
MASSARI, as trustee for trust holding money
in SouthTrust Asset Management Co. trust
account # 2640000519, CUMBERLAND
CASUALTY & SURETY COMPANY, a
Florida Corporation, as beneficiary of trust
holding money in SouthTrust Asset
Management Co. trust account # 2640000519,
and SOUTHTRUST ASSET
MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding
money in SouthTrust Asset Management Co.
trust account # 2640000519,

Defendants.

Case No.: DV-2000-146

WARRANT OF EXECUTION

1 To Robert Smith and Joseph Blaine of the State of Montana Department of
2 Environmental Quality, any other duly authorized employee or agent of the State of Montana
3 Department of Environmental Quality, potential bidders on an Execution Sale to be held on
4 October 30, 2009, the successful bidder(s) at that sale, and any peace officer of the State of
5 Montana:

6 This Court has considered the Application of the State of Montana Department of
7 Environmental Quality (Department) for a warrant of execution filed pursuant to § 25-13-213(4),
8 MCA, to enter Property owned by Marvin and Sandy Mintyala at 7 & 9 Boyd Creek Rd.,
9 described as PT E2SW4, PT W2SE4, AS SHOWN ON COS 439, SEC. 8, T. 15N, R. 19E, in
10 Fergus County, Montana (the Property) for the purposes of having a walk-through for potential
11 bidders at a Sheriff's Execution Sale, and then to remove the items sold at that Sale.

12 The Department has demonstrated the requisite probable cause for the entries requested
13 in the Application, and this Court is satisfied that the entries onto the Property are authorized by
14 law.

15 IT IS HEREBY ORDERED THAT upon service of this Warrant upon Marvin Mintyala,
16 Sandy Mintyala, or a representative of Mister M Disposal Inc., or if one of them is not available,
17 by posting it conspicuously at the Property, that Mr. Smith, Mr. Blaine, any other employee or
18 agent designated by the Department, any person who may be a potential bidder at the Execution
19 Sale, any successful bidders, and any peace officers of the State of Montana, are authorized to:

- 20 1. enter on and into, move about and remain on or about the Property to conduct a walk-
21 through of the Property on October 27, 2009, for the purpose of viewing the items to
22 be sold and of determining the amount of the bid(s) that may be made at the
23 Execution Sale to be held on October 30, 2009;

24 //

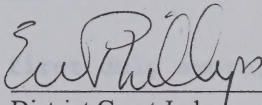
2. starting on the date of the Execution Sale, October 30, and ending December 3, 2009,
enter on and into, move about and remain on or about the Property to organize and
remove the items purchased at the Execution Sale. Motor vehicles and heavy
equipment may be used to enter onto the Property as needed to organize and remove
those items.

IT IS FURTHER ORDERED that a copy of this Warrant shall be left at the premises on
or before October 27, 2009.

IT IS FURTHER ORDERED that the Fergus County Sheriff's Office and its peace
officers are hereby authorized and directed to assist the employees and agents of the Department
and the potential and successful bidders in such manner as may be reasonable and necessary to
properly execute this Warrant and all the provisions contained herein.

Dated this 13 day of oct, 2009.

BY THE COURT:


District Court Judge

RICH VAUGHN, being

That he is a duly qualified Deputy Sheriff in the office of the Sheriff of Fergus County, Montana, a citizen of the United States, residing at Lewistown, Montana, and is not an interested party in the above mentioned matter.

That on the 28th day of OCTOBER, 2009, he posted or caused to be posted, true and correct copies of the annexed Warrant of Execution as follows, to wit:

7 and 9 Boyd Creek Road, Lewistown, Montana

Dated at Lewistown, Montana, this 10th day of NOVEMBER, 2009

THOMAS L. KILLIAN, SHERIFF

RICH VAUGHN, DEPUTY SHERIFF

STATE OF MONTANA)
:
COUNTY OF FERGUS)

OFFICE OF THE SHERIFF

STATE OF MONTANA ex rel DEPARTMENT
OF ENVIRONMENTAL QUALITY

Plaintiff

vs.

Docket No. DV-2000-146

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC., LEWISTOWN
LANDFILL, DOMENIC MASSARI, as trustee
for trust holding money in South Trust Asset
Management Co. trust account #2640000519,
CUMBERLAND CASUALTY & SURETY
COMPANY, a Florida Corporation, as
beneficiary of trust holding money in South Trust
Asset Management Co. trust account #
2640000519, and SOUTHTRUST ASSET
MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding money
in SouthTrust Asset Management Co. trust
account #2640000519,

Defendants

RICK VAUGHN, being first duly sworn, deposes and says:

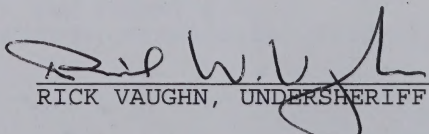
That he is a duly appointed and qualified Deputy Sheriff in
the office of the Sheriff of Fergus County, Montana, a citizen of
the United States, residing at Lewistown, Montana, and is not an
interested party in the above mentioned matter.

That on the 22ND day of OCTOBER, 2009, he posted or caused to
be posted, true and correct copies of the annexed Warrant of
Execution as follows, to wit:

7 and 9 Boyd Creek Road, Lewistown, Montana

Dated at Lewistown, Montana, this 10TH day of NOVEMBER, 2009.

THOMAS L. KILLHAM, SHERIFF


RICK VAUGHN, UNDERSHERIFF

IN THE TERN JUDICIAL DISTRICT COURT OF THE STATE OF MONTANA

SUBSCRIBED TO AND SWORN TO before me this 10TH day of
NOVEMBER, 2009.

STATE OF MONTANA ex rel DEPARTMENT
OF ENVIRONMENTAL QUALITY
Plaintiff

Susan A. Messer / Susan A. Messer
Notary Public in and for the
State of Montana residing at
Lewistown, Montana. My commission
expires 09/05/2012.

HARVIN MINTYALA and SANDY

Posting.....\$ 35.00
Copies.....\$
Mileage.....\$
Other.....\$
TOTAL.....\$ 35.00

and as officers,
dispositors, and shareholders of Mister "M"
Mister "M" DISPOSAL, INC., LEWISTOWN
LEWISTOWN, MONTANA. as trustees
for trust holding money in South Trust Asset
Management Co. trust account #
2640000019, and SOUTHWEST ASSET
MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding money
in SouthTrust Asset Management Co. trust
account #2640000019.

Defendants

PROOF OF SERVICE BY MAIL

The undersigned certifies that a copy of the Warrant of
Examination was served upon the Defendant(s) by depositing a copy
thereof in the United States Mail at Lewistown, Montana on the 21ST
day of OCTOBER, 2009. Enclosed in an envelope addressed to each of
the Defendants at the addresses set opposite their name(s) with
postage prepaid by first class mail.

NAME

ADDRESS

HARVIN MINTYALA

1265 ELM STREET #34
CLARKSTON, WASHINGTON 99403-2374

SANDY MINTYALA

1265 ELM STREET #34
CLARKSTON, WASHINGTON 99403-2374

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF MONTANA

IN AND FOR THE COUNTY OF FERGUS

STATE OF MONTANA ex rel DEPARTMENT
OF ENVIRONMENTAL QUALITY

Plaintiff

vs.

Docket No. DV-2000-146

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC., LEWISTOWN
LANDFILL, DOMENIC MASSARI, as trustee
for trust holding money in South Trust Asset
Management Co. trust account #2640000519,
CUMBERLAND CASUALTY & SURETY
COMPANY, a Florida Corporation, as
beneficiary of trust holding money in South Trust
Asset Management Co. trust account #
2640000519, and SOUTHTRUST ASSET
MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding money
in SouthTrust Asset Management Co. trust
account #2640000519,

Defendants

PROOF OF SERVICE BY MAIL

The undersigned certifies that a copy of the Warrant of Execution was served upon the Defendant(s) by depositing a copy thereof in the United States Mail at Lewistown, Montana on the 21ST day of OCTOBER, 2009. Enclosed in an envelope addressed to each of the Defendants at the addresses set opposite their name(s) with postage prepaid by first class mail.

NAME

ADDRESS

MARVIN MINTYALA

1265 ELM STREET #34
CLARKSTON, WASHINGTON 99403-2374

SANDY MINTYALA

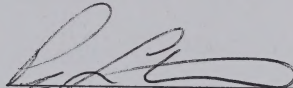
1265 ELM STREET #34
CLARKSTON, WASHINGTON 99403-2374

MISTER M DISPOSAL

%MARVIN MINTYALA
1265 ELM STREET #34
CLARKSTON, WASHINGTON 99403-2374

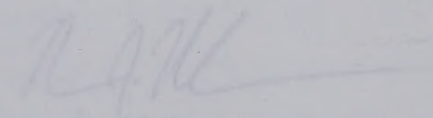
DATED this 21ST day of OCTOBER, 2009.

THOMAS L. KILLHAM, SHERIFF



COMMUNICATIONS OFFICER

Sincerely,



Marvin J. Mullen
Attorney for Department
tel. 424-4061 voice; 424-4185 fax
mullen@dc.gov email

CLARKSON, WASHINGTON 98003-2370
1205 1ST STREET SW
MARTIN LUTHER KING JR.

MARTIN LUTHER KING JR.

DATED THIS 21ST DAY OF OCTOBER, 2008.

THOMAS J. KILGAM, SHERIFF

COMMUNICATIONS OFFICER

County Fergus
Facility & # CL-302
Closure
Finan Assur
GW Corr Meas
GW Monitoring
GW Reports
Inspections
Other: Litigation

Landfarm
Liner
Methane
O & M
Run - On



Montana Department of
ENVIRONMENTAL QUALITY

RECEIVED

OCT 06 2009

DEPT. OF ENVIRO. QUALITY
WASTE & UNDERGROUND TANK
MANAGEMENT BUREAU

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

October 5, 2009

Phyllis D. Smith
Clerk of 10th Judicial District
PO Box 1074
Lewistown MT 59457-1074

**Re: Department's Application for Warrant of Execution in Montana Department
of Environmental Quality v. Marvin Mintyala and Sandy Mintyala, DV 2000-146**

Dear Ms. Smith or Clerk's staff:

I am enclosing the following for the case referred to above:

- original and a copied first page of an Application for Warrant of Execution;
- original and two copies of a proposed Warrant of Execution; and
- two self-addressed, stamped envelopes (SASEs).

Please bring the Application to the attention of Judge Phillips. Please date-stamp the copied first page and send it back to me in one SASE. If the Court signs the Warrant, please send the original and two conformed copies to me in the other SASE.

Thank you for your assistance. Please contact me if there are any problems with my request or if you have any questions.

Sincerely,

Norman J. Mullen
Attorney for Department
406-444-4961 voice; 444-4386 fax
nmullen@mt.gov email

encls.

c. DEQ- ENF, WUTMB-SW, chron

1 Norman J. Mullen
2 Special Assistant Attorney General
3 Department of Environmental Quality
4 Legal Unit, Metcalf Building
5 P.O. Box 200901
6 Helena, Montana 59620-0901
7 Telephone: (406) 444-4961
8 Attorney for Plaintiff

9 **MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY**

10 STATE OF MONTANA ex rel.
11 DEPARTMENT OF ENVIRONMENTAL
12 QUALITY,

13 Plaintiff,

14 vs.

15 MARVIN MINTYALA and SANDY
16 MINTYALA, as individuals and as officers,
17 directors, and shareholders of Mister "M"
18 Disposal, Inc., MISTER "M" DISPOSAL,
19 MISTER "M" DISPOSAL, INC.,
20 LEWISTOWN LANDFILL, DOMENIC
21 MASSARI, as trustee for trust holding money
22 in SouthTrust Asset Management Co. trust
23 account # 2640000519, CUMBERLAND
24 CASUALTY & SURETY COMPANY, a
Florida Corporation, as beneficiary of trust
holding money in SouthTrust Asset
Management Co. trust account # 2640000519,
and SOUTHTRUST ASSET
MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding
money in SouthTrust Asset Management Co.
trust account # 2640000519,

Defendants.

Case No.: DV-2000-146

**APPLICATION FOR
WARRANT OF EXECUTION
UNDER § 25-13-213, MCA**

The State of Montana, through the Department of Environmental Quality (Department), hereby applies to this Court for a Warrant of Execution authorizing Department employees, peace officers, and potential and successful bidders at a Sheriff's Execution Sale to enter upon real property owned by or in the possession of Marvin and Sandy Mintyala at 7 and 9 Boyd Creek Rd., legally described as PT E2SW4, PT W2SE4, as shown on COS 439, SEC. 8, T. 15N, R. 19E, near Lewistown, Fergus County, Montana (the Property). The Warrant is necessary to authorize those people to enter onto the Property on a day shortly before the Execution Sale so that the potential bidders can observe the personal property to be sold and determine the price they wish to offer at the sale. The Warrant is also necessary to authorize the successful bidder at the Execution Sale to enter onto the Property and remain there for sufficient time, up to 34 days, to remove the property purchased at the Execution Sale.

Statutory Authority for Warrant:

The Department submits this application pursuant to § 25-13-213(4), MCA, which authorizes a Warrant of Execution when the property to be levied upon is not in the debtor's residence but when there may be a reasonable expectation of privacy. The Department does not concede that Defendants have a reasonable expectation of privacy at the Property, but to avoid any problems and to protect the interests of the debtors, the Department, the Sheriff, and the bidders, the Department believes a warrant may be appropriate for the reasons set forth below.

Background:

The Department obtained a Judgment in this case on September 13, 2002. The value of the money Judgment now amounts to \$175,144.47. See Ninth Writ of Execution issued by this Court on August 5, 2009.

Under that Ninth Writ, the Fergus County Sheriff has seized the metal, vehicles, and heavy equipment, as well as some bricks, so that they may be sold at public auction to help satisfy the Department's Judgment. The scrap metal, vehicles, and heavy equipment are too large and awkward to be moved, so the Sheriff has levied on those items onsite. Affidavit of Robert Smith, Exhibit 1, at ¶ 10.

The Sheriff posted a Notice of Seizure and of Exemption Rights and mailed it to the Defendants on August 28, 2009. The Mintyalas filed a request for hearing on exemptions, but this Court vacated the hearing because they did not make any claims for exemptions.

Warrant Needed for Walk-through on October 27 and for 34 Days After October 30 Sale

The Fergus County Sheriff has set a date of October 27, 2009, for the walk-through and of October 30, 2009, for the Execution Sale. The Department is therefore requesting to have the Warrant authorize entry starting on the day of the walk-through, October 27, and continuing for 30 days after the execution sale, until December 3, 2009. Smith Affidavit, Exhibit 1, at ¶¶ 15-22.

The Department has contacted metal salvagers who are potential bidders at the Execution Sale. One has informed the Department that it would be commercially reasonable for him to be able to walk through the Property to view the items for sale and their location on the Property, and then have two days to return to his office to prepare a bid, and then return to Lewistown for the Execution Sale. Other potential bidders have stated that this timeline would be acceptable to them, also. Exhibit 1 at ¶ 16.

So, the Department is requesting that the Warrant of Execution include authorization for entry onto the Property for a walk-through by the Department, Sheriff, and potential bidders. Exhibit 1 at ¶ 15.

1 The scrap metal, vehicles, heavy equipment, and brick to be sold at the Execution Sale
2 are scattered around the Mintyala Property. The successful bidder will need to use heavy
3 equipment to travel from the entrance gate off Highway 200 across the Property to gain access to
4 items purchased at the sale. It will likely take the successful bidder some days to move the items
5 to a place where they can be loaded onto trucks for transport to the bidder's yard. The metals
6 salvagers who may be potential bidders have told the Department that they may need up to 30
7 days after the sale to remove the sold items. The Department believes that it may take a few
8 days for the successful bidder(s) to get their equipment to the Property to begin the removal. The
9 Writ of Execution expires on December 3, 2009, so that is a reasonable date to have the
10 authorization to enter under the warrant expire, also. Exhibit 1 at ¶ 17.

11 The Department does not concede that the entry and occupation of the Property during
12 the walk-through and from the time of the Execution Sale until all the sold items are removed
13 implicate the defendants' privacy interests in their Property. Much of the metal, vehicles, and
14 heavy equipment is in plain view from Highway 200, and is in open fields where there is no
15 indication that defendants have an expectation of privacy. Also, the Property was the site of a
16 licensed landfill and still is subject to regulation under the solid waste laws and rules. However,
17 in case a court could hold that privacy interests are implicated, the Department requests that this
18 Court issue a Warrant of Execution to authorize the Department, Montana peace officers,
19 potential bidders at the Sheriff's Execution Sale, and then the successful bidder(s) to enter onto
20 the Property for the purpose of the walk-through before the sale, and then, after the sale, to enter
21 and remain on the property for 34 days, through December 3, 2009, as needed to remove the sold
22 items from the Property.

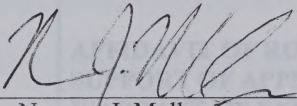
23 As stated in the accompanying affidavit, the Department believes that authorization for
24 entry for a walk-through on October 27, and then a 34-day period after the sale for entry by the

1 successful bidder(s), the Department, and Montana peace officers, is necessary to conduct the
2 sale and removal of the sold items. The Department therefore requests that this Court authorize
3 entry between October 27 and December 3, 2009. Exhibit 1, ¶¶ 17-22.

4 Wherefore, the Department respectfully requests that this Court issue a Warrant of
5 Execution authorizing entry from October 27 through December 3, 2009, for a walk-through
6 before the Execution Sale, and for entry for 34 days after the sale to allow removal of the sold
7 items from the Property. A proposed Warrant of Execution is attached to this application.

8 DATED October 5, 2009

9 STATE OF MONTANA
10 DEPARTMENT OF ENVIRONMENTAL QUALITY

11 By 
12 Norman J. Mullen
Special Assistant Attorney General

13 MARVIN MINTYALA and SANDY
14 MINTYALA, as individuals and as officers,
15 trustees, and shareholders of Mister "M"
16 Disposal, Inc., MISTER "M" DISPOSAL,
17 MISTER "M" DISPOSAL, INC.,
18 LEWISTOWN LANDFILL, DOMENIC
19 MASSARI, as trustee for trust holding money
20 in SouthTrust Asset Management Co. trust
21 account # 264000319, CUMBERLAND
22 CASUALTY & SURETY COMPANY, a
23 Florida Corporation, as beneficiary of trust
24 holding money in SouthTrust Asset
Management Co. trust account # 264000319,
and SOUTHTRUST ASSET
MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding
money in SouthTrust Asset Management Co.
trust account # 264000319.

Defendants.

I, ROBERT SMITH, being duly sworn, state as follows:

1 Norman J. Mullen
Special Assistant Attorney General
2 Department of Environmental Quality
Legal Unit, Metcalf Building
P.O. Box 200901
3 Helena, Montana 59620-0901
Telephone: (406) 444-4961

4 Attorney for Plaintiff

5
6
7
8 **MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY**

9 STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
10 QUALITY,

11 Plaintiff,

12 vs.

13 MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
14 directors, and shareholders of Mister "M"
Disposal, Inc., MISTER "M" DISPOSAL,
15 MISTER "M" DISPOSAL, INC.,
LEWISTOWN LANDFILL, DOMENIC
16 MASSARI, as trustee for trust holding money
in SouthTrust Asset Management Co. trust
17 account # 2640000519, CUMBERLAND
CASUALTY & SURETY COMPANY, a
18 Florida Corporation, as beneficiary of trust
holding money in SouthTrust Asset
19 Management Co. trust account # 2640000519,
and SOUTHTRUST ASSET
20 MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding
21 money in SouthTrust Asset Management Co.
trust account # 2640000519,

22 Defendants.
23

Case No.: DV-2000-146

**AFFIDAVIT OF ROBERT SMITH IN
SUPPORT OF APPLICATION FOR
WARRANT OF EXECUTION
UNDER § 25-13-213, MCA**

24 I, ROBERT SMITH, being duly sworn, state as follows:

1 1. I am over 18 years of age.

2 2. I reside in Lewis and Clark County.

3 3. I am employed by the Montana Department of Environmental Quality (Department)
4 as an enforcement specialist for the Department's Enforcement Division.

5 4. In that capacity, I work to enforce compliance with regulatory programs within the
6 Department and to prosecute civil enforcement actions against the owners or operators of
7 properties or facilities that may not be in compliance with applicable laws and rules. Part of my
8 work entails reviewing Department records to evaluate compliance with Montana's laws, rules,
9 and orders governing solid waste.

10 5. I make this affidavit in support of the attached Application for Warrant of Execution,
11 which is sought pursuant to § 25-13-213, MCA. I base this affidavit upon personal knowledge
12 and my review of records in Department files.

13 6. On September 13, 2002, the Department obtained a Judgment against Marvin and
14 Sandy Mintyala and Mister "M" Disposal Inc in Fergus County District Court Case No. DV-
15 2000-146.

16 7. The Mintayalas and Mister M Disposal own numerous items of personal property that
17 are located on real property owned by the Mintyalas at 7 and 9 Boyd Creek Road east of
18 Lewistown in Fergus County. The real property has been assigned assessor code number
19 0000028600, and is described as PT E2SW4, PT W2SE4, AS SHOWN ON COS 439, SEC. 8, T.
20 15N, R. 19E, in Fergus County, Montana It will be referred to as the Property.

21 8. The personal property at the Property includes heavy equipment, such as Caterpillar
22 tractors and crawlers, and vehicles such as garbage trucks. Other personal property located at the
23 Property includes scrap metal and pallets of bricks.

24 //

9. The Department's Judgment against the Mintyalas and Mister M includes a money Judgment now amounting to \$175,144.47.

10. The Department has obtained a Ninth Writ of Execution from the Clerk of this Court, and the Fergus County Sheriff seized the personal property described in ¶¶ 7 and 8 by posting a notice at the Property on about August 28, 2009. This was due to the personal property being heavy and large and difficult to move.

11. The Department wishes to have the Sheriff sell the personal property to help pay the judgment.

12. The Department excluded from the items seized under the Writ of Execution those items that were claimed as exempt by the Mintyalas last year. On August 28, 2009, the Fergus County Sheriff mailed Notices of Seizure to the Mintyalas and Mr. M and to 3rd parties listed by the Mintyalas last year as having claims of ownership to any of the items of personal property seized. The Mintyalas filed a request for hearing on exemptions, but this Court vacated the hearing because they did not make any claims for exemptions. Steven Mintyala filed a Notice of Third Party Claim on September 16, 2009, and the Department is not disputing his claim to the items in that notice.

13. On behalf of the Department, I have spoken with many scrap metal salvagers and heavy equipment dealers. Because of the poor condition and great age of the heavy equipment and vehicles, the salvagers and dealers have told me that they do not believe the heavy equipment or vehicles have values greater than their value as scrap metal.

14. I believe that the Department will obtain the highest price for the personal property on the Mintyalas' Property by selling the equipment, vehicles, and scrap as scrap metal. There may be some potential bidders who wish to buy individual items of property for use as vehicles or equipment, rather than for scrap.

1 15. Because of the nature of the personal property to be sold, a walk-through on the
2 Property by potential bidders is necessary for them to be able to determine the bid price. In
3 addition, it is possible that a walk-through will help potential bidders decide if they want to
4 request that individual items be sold as separate lots.

5 16. One of the metals salvagers has told me that he wishes to do the walk-through two
6 days before the sale, and then return to his office and prepare his bid. Other salvagers have told
7 me that this is acceptable.

8 17. The metals salvagers whom I have spoken with have told me that because of the size
9 and number of pieces of heavy equipment and vehicles, it may take up to 30 days after a sale for
10 a successful bidder to remove the heavy equipment, vehicles, and scrap metal from the Property.
11 To remove the personal property items, the successful bidder will need to travel around the
12 Property to the items purchased, and load and haul them to a central staging site or to the
13 highway to truck them away. Some of the potential bidders have told me that many of the
14 vehicles and pieces of heavy equipment are so large and heavy that only one piece of equipment
15 or vehicle will fit on a truck at a time, so many trips to the successful bidder's yard will be
16 required to remove all of the sold items. Because the closest potential bidder is 105 miles away
17 in Great Falls, and others are 235 miles away in Butte, only 1-3 round trips per day can be made
18 for each truck that hauls items from the Property. Also, it may take a few days after the sale for
19 the successful bidders to mobilize their equipment and get to the site. Because the Writ of
20 Execution was issued on August 5, 2009, the Writ lasts through December 3, 2009. I believe it
21 would be reasonable to authorize the successful bidder(s) to enter onto the Property through
22 December 3, 2009.

23 18. So, I believe that the Department and Sheriff need to conduct a walk-through for
24 potential bidders at the Property two days before the sale. I believe that, following the sale, the

1 successful bidder may need until December 3 to remove the purchased property. In addition,
2 because part of the Property was a landfill where waste is buried, and where drainage and
3 monitoring wells are located, the Department believes it is necessary for it to have a
4 representative onsite during the walk-through and part of the time that sold items are being
5 removed to show bidders and purchasers where sale items are located, and to direct them away
6 from non-sale items, and to show them where they should and should not travel on the Property
7 to protect the integrity of the Property and landfill cover and systems.

8 19. The Department does not wish to violate any possible privacy interests of the debtors,
9 and does not wish to expose the Sheriff, bidders, or purchasers to any liability.

10 20. Therefore, I have requested the Department's attorney to request a Warrant of
11 Execution that would authorize the pre-sale walk-through and the removal of the sold goods.

12 21. The Fergus County Sheriff has informed the Department that October 27, 2009, is
13 acceptable for the walk-through, and that the sale will be held on October 30, 2009.

14 //

15 //

16 //

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18 //

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24 //

22. As a result, I believe that an appropriate period for the Warrant of Execution to cover would be from October 27, 2009, through December 3, 2009. This will allow the Sheriff time to post notice of and advertise the sale as required in § 25-13-701, MCA, and it would allow for the walk-through by potential bidders, and then for successful bidder(s) to be on the property through December 3, 2009, to remove the sold items.

23. That completes my affidavit.

Robert Smith

ROBERT SMITH

STATE OF MONTANA)

:ss

County of Lewis & Clark)

Subscribed and sworn to before me by ROBERT SMITH this 5th day of October, 2009.



Kari S. Smith
NOTARY PUBLIC for the State of Montana

Kari S. Smith

Printed Name of Notary

Title Notary

Residing at Lewis & Clark Co. - Helena

My commission expires: June 29, 2010

County Fergus
Facility & # 22302
Closure Landfarm
Finan Assur Liner
GW Corr Meas Methane
GW Monitoring O & M
GW Reports Run - On
Inspections Litigation
Other: _____

CLERK OF THE
DISTRICT COURT
PHYLLIS D. SMITH

2009 SEP 29 AM 8 03

FILED
BY *Sheila J. Mackler*
DEPUTY

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Case No.: DV-2000-146

Plaintiff,

**ORDER VACATING HEARING
ON MINTYALAS' CLAIMS FOR
EXEMPTIONS**

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC.,
LEWISTOWN LANDFILL, DOMENIC
MASSARI, as trustee for trust holding money
in SouthTrust Asset Management Co. trust
account # 2640000519, CUMBERLAND
CASUALTY & SURETY COMPANY, a
Florida Corporation, as beneficiary of trust
holding money in SouthTrust Asset
Management Co. trust account # 2640000519,
and SOUTHTRUST ASSET
MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding
money in SouthTrust Asset Management Co.
trust account # 2640000519,

Defendants.

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OCT 02 2009

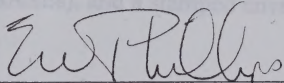
DEPT. OF ENVIRO. QUALITY
WASTE & UNDERGROUND TANK
MANAGEMENT BUREAU

1 THIS MATTER having come before the court upon the Department's Motion to Vacate
2 Hearing on Claim for Exemptions, and the Court having fully reviewed this matter,

3 HEREBY FINDS that the Defendants Marvin and Sandy Mintyala did not claim an
4 exemption in their Request for Hearing on Claimed Exemptions on September 17, 2009, but
5 rather asserted that third parties own the items seized by the Sheriff of Fergus County under a
6 Writ of Execution issued by the Clerk of this Court. The Court CONCLUDES that because they
7 did not claim an exemption, and because they assert that third parties own the seized items, the
8 Mintyalas lack standing to request a hearing, and that the hearing must be vacated.

9 It is therefore ORDERED that the hearing set for October 28, 2009, is vacated,
10 and that the Mintyalas have not made a valid claim for exemptions and are not entitled to
11 a hearing.

12
13 DONE and DATED 9/29, 2009.

14 
15 _____
16 DISTRICT COURT JUDGE

Route:

Joe

B

Martin

MVO

Then file.

was



Montana Department of
ENVIRONMENTAL QUALITY

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

September 23, 2009

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SEP 24 2009

Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau

Phyllis D. Smith
Clerk of 10th Judicial District
PO Box 1074
Lewistown MT 59457-1074

**Re: Department's Motion to Vacate Hearing on Claim for Exemptions in Montana
Department of Environmental Quality v. Marvin Mintyala and Sandy Mintyala, DV
2000-146**

Dear Ms. Smith or Clerk's staff:

I am enclosing the following for the case referred to above:

- original and a copied first page of a Motion to Vacate Hearing on Mintyalas' Claim for Exemptions;
- original and two copies of a proposed Order
- two self-addressed, stamped envelopes (SASEs), and a stamped envelope addressed to the Mintyalas .

Please file the Motion. Please conform and date-stamp the copied first page, and please send it back to me in the SASE. If the Court enters the Order, please send conformed copies to the parties in the envelopes provided.

Thank you for your assistance. Please contact me if there are any problems with my request or if you have any questions.

Sincerely,

Norman J. Mullen
Attorney for Department
406-444-4961 voice; 444-4386 fax
nmullen@mt.gov email

encls.

c. DEQ- ENF, WUTMB-SW, chron

1 Norman J. Mullen
2 Special Assistant Attorney General
3 Montana Department of Environmental Quality
4 1520 E. Sixth Avenue
5 P.O. Box 200901
6 Helena, Montana 59620-0901
7 (406) 444-4961

8 Attorney for Department

9 **MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY**

10 STATE OF MONTANA ex rel.
11 DEPARTMENT OF ENVIRONMENTAL
12 QUALITY,

13 Plaintiff,

14 vs.

15 MARVIN MINTYALA and SANDY
16 MINTYALA, as individuals and as officers,
17 directors, and shareholders of Mister "M"
18 Disposal Inc., MISTER "M" DISPOSAL,
19 MISTER "M" DISPOSAL INC.,
20 LEWISTOWN LANDFILL, DOMENIC
21 MASSARI, as trustee for trust holding money
22 in SouthTrust Asset Management Co. trust
23 account # 2640000519, CUMBERLAND
24 CASUALTY & SURETY COMPANY, a
Florida Corporation, as beneficiary of trust
holding money in SouthTrust Asset
Management Co. trust account # 2640000519,
and SOUTHTRUST ASSET
MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding
money in SouthTrust Asset Management Co.
trust account # 2640000519,

Defendants.

Case No.: DV-2000-146

**DEPARTMENT'S MOTION TO
VACATE HEARING ON
MINTYALAS' CLAIMS FOR
EXEMPTIONS, WITH BRIEF**

1 The Department obtained a ninth writ of execution in this case on August 5, 2009. The
2 Fergus County Sheriff levied on personal property located at 7-9 Boyd Creek Road in Fergus
3 County, and served a notice of seizure and a notice of exemption rights by mail on the Mintyals
4 and Mister M Disposal, Inc. on August 28, 2009. Marvin and Sandy Mintyala filed a Request
5 for Hearing on Claimed Exemptions on September 17, 2009.

6 On September 21, 2009, this Court ordered that a hearing be held on October 28,
7 2009, on Defendants Mintyals' claim of exemptions.

8 The Mintyals have not claimed any exemption recognized by law. The only
9 claim they have made is that someone else owns some of the seized property. See
10 attachments to Mintyals' Request for Hearing.

11 This Court ruled at the exemption hearing in this case held on October 1, 2008, that a
12 claim that someone else owns property is not a proper claim for exemption. This ruling was
13 based on case law that holds that a debtor who is notified that property has been seized so that it
14 may be sold to satisfy his debt lacks standing to object to the seizure and sale if the property is
15 owned by a third party. The same claim is being made here, and it must fail again. See *AR*
16 *Bacon Architecture, P.C. v. Launer*, 2001 U.S. Dist. LEXIS 25604 (D. Conn. 2001). It is
17 attached here as Appendix A.

18 Because the Mintyals have not filed a proper claim for an exemption, they are
19 not entitled to a hearing, and this Court should vacate the exemption hearing and rule that
20 Mintyala has not made a valid claim for an exemption.

21 Therefore, Marvin Mintyala is not entitled to a hearing to oppose the seizure of
22 property, and the hearing should be vacated.

23 //

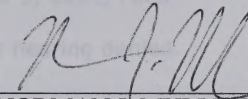
24 //

1 WHEREFORE, the Department respectfully requests this Court to vacate the
2 hearing now set for October 28, 2009, and rule that Mintyalas have not made a valid
3 claim for exemptions and are not entitled to a hearing.

4 STATE OF MONTANA
5 DEPARTMENT OF ENVIRONMENTAL QUALITY

6 September 23, 2009
7 (date)

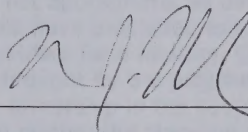
By:


8
9 NORMAN J. MULLEN
Special Assistant Attorney General

10 **CERTIFICATE OF SERVICE**

11 The undersigned hereby certifies that a true and correct copy of the foregoing
12 Department's Post-Hearing Brief was sent on September 23, 2009, via U.S. Mail, postage pre-
13 paid, to the defendants, addressed as follows:

14 Marvin Mintyala
15 Sandy Mintyala
16 1265 Elm Street #34
17 Clarkston WA 99403-2374



AR BACON ARCHITECTURE, P.C., Plaintiff, -vs- Civ. STEVEN I. LAUNER d/b/a
CONTOUR DESIGN GROUP, Defendant.

No. 3:01mc137 (PCD)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

2001 U.S. Dist. LEXIS 25604

November 9, 2001, Filed

DISPOSITION: Defendant's motion for hearing denied.

CASE SUMMARY

PROCEDURAL POSTURE: A judgment was rendered against defendant, the movant, who was served with a writ of execution of judgment. A vehicle was seized in satisfaction of the judgment. Defendant claimed the property seized was exempt because the vehicle was owned by his brother's corporation, rather than defendant's business, against which the judgment was rendered. Defendant moved for a hearing to contest the validity of the property seizure.

OVERVIEW: The vehicle at issue could not be the subject of a hearing to contest the validity of an execution of judgment. Defendant argued that he had no interest whatsoever in the subject vehicle and, as such, the vehicle could not be seized. A hearing to resolve the applicability of a statutory exemption, specifically, Conn. Gen. Stat. § 52-361b(d), was, therefore, not appropriate, as defendant did not claim an exemption personal to him that would have precluded execution of judgment. Moreover, the only other section providing for a hearing, Conn. Gen. Stat. § 52-356c(a), required that the claim be brought by the judgment creditor or third person and presumed some degree of prior ownership in the subject property by the judgment debtor. Defendant claimed neither the standing nor the prior ownership necessary under § 52-356c(a). There was, therefore, no basis for granting his request for a hearing.

OUTCOME: Defendant's motion for a hearing on property execution was denied.

CORE TERMS: execution of judgment, seized, exemption, contest, ownership, exempt

LEXISNEXIS® HEADNOTES

 Hide

Civil Procedure > Federal & State Interrelationships > Erie Doctrine 

Civil Procedure > Judgments > Entry of Judgments > Enforcement & Execution > Writs of Execution 

HN1 Execution on judgments shall be carried out in accordance with state procedures unless superseded by an applicable federal procedure. Fed. R. Civ. P. 64, 69(a). [More Like This Headnote](#)

Civil Procedure > Judgments > Entry of Judgments > Enforcement & Execution > Writs of Execution 

Appendix A

^{HN2} ¶ Under Connecticut law, execution may be made on property not subject to an exemption. Conn. Gen. Stat. § 52-350f. Exempt property is defined by Conn. Gen. Stat. § 52-352b. A hearing may be requested to resolve disputed interests in property on which execution is sought. Conn. Gen. Stat. §§ 52-356c(a), 52-361b(d). [More Like This Headnote](#)

JUDGES: [*1] Peter C. Dorsey, United States District Judge.

OPINION BY: Peter C. Dorsey

OPINION

RULING ON MOTION FOR HEARING ON PROPERTY EXECUTION

Defendant moves for a hearing to contest property seized by plaintiff pursuant to a writ of execution of judgment. For the reasons set forth herein, defendant's motion is denied.

I. BACKGROUND

On March 9, 2001, the District Court for the Southern District of New York rendered judgment against defendant. On September 25, 2001, defendant was served with a writ of execution of judgment. A 1997 Toyota Celica was seized in satisfaction of the judgment. Defendant claims the property seized was exempt because the vehicle was owned by Contour Design Group, Inc., a Florida corporation owned by his brother, rather than his business, Contour Design Group, against which the judgment was rendered. On October 11, 2001, defendant moved for a hearing to contest the validity of the property seizure.

II. DISCUSSION

^{HN1} ¶ Execution on judgments shall be carried out in accordance with state procedures unless superseded by an applicable federal procedure. *See* FED. R. CIV. P. 64; FED. R. CIV. P. 69(a) [*2]. ^{HN2} ¶ Under Connecticut law, execution may be made on property not subject to an exemption. CONN. GEN. STAT. § 52-350f. Exempt property is defined by CONN. GEN. STAT. § 52-352b. A hearing may be requested to resolve disputed interests in property on which execution is sought. *See* CONN. GEN. STAT. § 52-356c(a); CONN. GEN. STAT. § 52-361b(d).

The vehicle at issue may not be the subject of a hearing to contest the validity of an execution of judgment. Defendant argues that he has no interest whatsoever in the subject vehicle and, as such, the vehicle could not be seized. A hearing to resolve the applicability of a statutory exemption, *see* CONN. GEN. STAT. § 52-361b(d), is, therefore, not appropriate as defendant does not claim an exemption personal to him that would preclude execution of judgment. Moreover, the only other section providing for a hearing requires that the claim be brought by "the judgment creditor or third person" and presumes some degree of prior ownership in the subject property by the judgment debtor. *See* CONN. GEN. STAT. § 52-356c (a) [*3]. Defendant claims neither the standing nor the prior ownership necessary under § 52-356c (a). There is, therefore, no basis for

granting his request for a hearing.

III. CONCLUSION

Defendant's motion for a hearing on property execution (Doc. 3) is **denied**.

SO ORDERED.

Dated at New Haven, Connecticut, November, 2001.

Peter C. Dorsey
United States District Judge

Cause No. DV-2000-146

ENVIRONMENTAL

by Mistyala et al

Defendants

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Dept. of Environ. Quality
Water & Underground
Tank Management Bureau

REQUEST FOR HEARING ON CLAIMED EXEMPTIONS

Defendant requests and petitions the Court as follows:

1. A Judgment was entered against the above Defendant(s) in the above-entitled Court. Upon application to the Court a Writ of Execution was issued. The Sheriff or Levying Officer levied the execution upon property of the Defendant.

2. The Defendant believes the Sheriff or Levying Officer has levied against exempt property. The defendant claims an exemption in the following property as listed in The Register of Seizures.

Describe the property claimed exempt, and type of exemption

See attached listing for details.

ENV. WUTMB JV sw 1/21/01

Darrell Ass
Site B
Martin MVO

County Fergus
Facility & # CL-302
Closure
Finan Assur
GW Corr Meas
GW Monitoring
GW Reports
Inspections
Other: Litigation

Landfarm
Liner
Methane
O & M
Run - On

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

requests a hearing before the Court on the claimed exemptions.

• * * * * *

Dated this 22 day of Sept 2009.

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Cause No. DV-2000-146

Plaintiff

Vs.

Marvin Mintyala and Sandy Mintyala et al

Defendants

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Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau

• * * * * *

REQUEST FOR HEARING ON
CLAIMED EXEMPTIONS

• * * * * *

Defendant represents and petitions the Court as follows:

1. A Judgment was entered against the above Defendant(s) in the above-entitled Court. Upon application to the Court a Writ of Execution was issued. The Sheriff or Levying Officer levied the execution upon property of the Defendant.
2. The Defendant believes the Sheriff or Levying Officer has levied against exempt property. The defendant claims an exemption in the following property as listed in The Notice of Seizure.

Describe the property claimed exempt, and type of exemption:

See attached listing for details.

C: ENF, WUTMB-JV+SW 9/21/09

3. Defendant is entitled to a prompt hearing on claimed exemptions. Defendant requests a hearing before the Court on the claimed exemptions.

Dated this 12 day of Sept, 2009.

Marvin E. Mintyala

Landry E. Mintyala

86 -- CAT D9 18A SER#2055 USED PARTS

82 -- CAT REPAIR PARTS

85 -- CAT D9 34A SERIAL NUMBER UNKNOWN, ANGLE DOZER EXC. PART

2 -- CASE 1150 LOADER WITH BUCKET SER# 110315 BUCKET & ARM SER # 102690

90 -- 4 IN 1 BUCKET DROT SER# AL20A132

47 -- CATERPILLAR REPAIR PARTS BY FUEL SHED

89 & 91 -- CAT 79 PULL SCRAPER SER# 5W9160

51, 55 & 57 -- CAT DOZER BLADE, TRACKS AND CANOPY FOR D9 CAT

54 -- TRACKS FOR CASE 1150 LOADER

52 -- CAT PARTS NEAR FUEL SHED TOP OF HILL INCLUDING TRACKS, CANOPY & OTHER PARTS

48 -- D2 CAT WITH DOZER

44 -- CASE D95 AND (BACK HOE D100 SER # 112298)

23 -- CAT REPAIR PARTS

40 -- OLD FORD COCA COLA TRUCK FULL OF CATERPILLAR SPARE PARTS USED FOR STORAGE

13 & 36 -- CANOPY FOR CATERPILLER D9 PLUS OTHER PARTS

41 -- D9 18A SER# 531 WITH HINGED RIPPER

35, 36 & 37 -- CAT PARTS FOR SER# 531

38 -- D DOZER FOR CAT SER # 531

29 -- CAT D9 18A WITH DOZER AND HINGED RIPPER SER# 1694

32 -- CAT TRANSMISSION IN FRONT OF JEEP

37 -- 1967 CHEVROLET PANEL SER #H63J003641

TO SHERIFF OF FERGUS COUNTY
CLERK OF COURT, MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY
RE: SEIZURE DV-2000146
AUGUST 25, 2009 dated & mailed August 27, 2009

PAGE 1 OF 3

LEGEND

** PROPERTY OF T M STRICKER
**** PROPERTY OF RAY COX
^^^^ PROPERTY OF STEVE MINTYALA
^^ PROPERTY OF OTHERS SEE ITEM

PROPERTY OF T M STRICKER

- ** 66 ----CAT D9 18A SER#2058 USED PARTS
- ** 62--- CAT REPAIR PARTS
- ** 65 ---CAT D9 34A SERIAL NUMBER UNKNOWN, ANGLE DOZER ENGINE APART
- ** 2 ---CASE 1150 LOADER WITH BUCKET SER#7110335 BUCKET & ARMS SER # 102660
- ** 60 ---4 IN 1 BUCKET DROT SER# AL20A132
- ** 47 ---CATERPILLAR REPAIR PARTS BY FUEL SHED
- ** 59 & 61 ---CAT 70 PULL SCRAPER SER# SW6150
- ** 51, 53 & 57 ---CAT DOZER BLADE, TRACKS AND CANOPY FOR D9 CAT
- ** 54 ---TRACKS FOR CASE 1150 LOADER
- ** 52 ---CAT PARTS NEAR FUEL SHED TOP OF HILL INCLUDING TRACKS, CANOPY & OTHER PARTS
- ** 49 ---D2 CAT WITH DOZER
- ** 44 ---CASE DH5 AND (BACK HOE D100 SER # 1122946)
- ** 23 ---CAT REPAIR PARTS
- ** 40 ---OLD FORD COCA COLA TRUCK FULL OF CATERPILLAR SPARE PARTS USED FOR STORAGE
- ** 13 & 39 ---CANOPY FOR CATERPILLER D9 PLUS OTHER PARTS
- ** 41 ---D9 18A SER# 531 WITH HINGED RIPPER
- ** 35, 36 & 37 --- CAT PARTS FOR SER# 531
- ** 38 ---U DOZER FOR CAT SER # 531
- ** 29 ---CAT D9 18A WITH DOZER AND HINGED RIPPER SER# 1694
- ** 32 ---CAT TRANSMISSION IN FRONT OF JEEP
- ** 31 ---1953 CHEVROLET PANEL SER #H53J003841

CLERK OF COURT, MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY
RE: SEIZURE DV-2000146

- ** 30 ---CAT MODEL DW10 SELF PROPELLED SCRAPER
- ** 22 ---CAT ENGINE REPAIR PARTS
- ** 19 ---CAT HEADS 3
- ** 21 ---CAT RADIATOR
- ** 3 ---CAT CANOPY BEHIND OFFICE
- ** 10 ---FINAL DRIVE WITH SPROCKET AND TURN BRAKE IN FRONT OF POLE BARN
- ** 7 ---CAT REPAIR PARTS
- ** 4 ---CAT D9 18A WITH SCRAPER CAT SER# 18A1836
- ** 6 ---INTERNATIONAL TD25 CRAWLER TRACTOR WITH DOZER AND HINGED RIPPER
SER# BP2040

PROPERTY OF RAY COX

- **** 33 & 28 1966 DODGE WRECKER SER # 1481577548 LICENSE 8T2081A
- **** 25 CHEVROLET WINCH 1 1/2 TON WINCH TRUCK
- **** 67 1974 DODGE 300 UTILITY TRUCK
- **** 12 -ENDGATES GOOSENECK TRAILERS
- **** 16 1975 FET GOOSENECK TRAILER SER# 187312640
- **** 15 SCHUSTER GOOSE NECK TRAILER LICENSE # 8TR2808A
- **** 11 1976 CIRCLE J COMBINATION STOCK TRAILER SER # 6418 LICENSE 8TR 310A
- **** OLD AND NEW BRICKS

PROPERTY OF OTHERS SEE ITEM

^^ 27 ---ALLIS CHALMERS HD7 CRAWLER TRACTOR WITH DOZER PROPERTY OF
NORMA IRELAND, Lewistown, Mt

^^^^ 5 ---1981 DODGE 4X4 ¾ TON PICKUP SER# 1B7KW25T9BS184755 ---
PROPERTY OF STEVE MINTYALA

^^^^ 34 ---CHEVROLET PICKUP 1968 SER# KE248J119593 PROPERTY OF
STEVE MINTYALA

^^^^ 18 40 VAN TRAILER ID#4471 ON FRONT PANEL SER# 6H12681-102
PROPERTY OF STEVE MINTYALA

^^^^ 14 ---196? INTERNATIONAL TRACTOR YELLOW & WHITE SER # 17073
PROPERTY OF STEVE MINTYALA

DATED September 12, 2009

Montana Department of
ENVIRONMENTAL QUALITY

P.O. Box 200901 • Helena, MT 59620-0901

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SEP 22 2009

Brian Schweitzer, Governor
Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau
www.deq.mt.gov

September 21, 2009

Ray Cox
R Machine & Welding
1310 Truck Bypass Route
Lewistown MT 59457

Certified Mail No. 7006 2760 0000 9027 8336
Return Receipt Requested

Re: Claim to Items of Property on Mintyala land at 7-9 Boyd Creek Rd

Dear Mr. Cox:

I represent the Montana Department of Environmental Quality (MDEQ) on solid waste issues. I am writing to follow up on our telephone conversation of this morning, in which DEQ enforcement case manager Robert Smith participated on speakerphone from my office. Thank you for speaking with us.

I am the lawyer for MDEQ in a landfill enforcement case, Fergus County District Court Case No. DV 200-146, in which MDEQ obtained a judgment for about \$167,000 for post-closure care funds against Marvin and Sandy Mintyala and Mister M Disposal, Inc. The Fergus County District Court has issued a writ of execution on that judgment and, based on that writ, the Fergus County Sheriff has seized personal property, including heavy equipment, motor vehicles, trailers, and brick at the Mintyalas' land at 7 and 9 Boyd Creek Road east of Lewistown in Fergus County. The Sheriff sent a notice of seizure to the Mintyalas, and Marvin Mintyala responded by filing the enclosed Request for Hearing in which he stated that many trailers and some pallets of brick that had been seized are owned by you. This means that Mr. Mintyala has legally disclaimed any interest in those items.

Ownership by a third person is not a valid claim of exemption, and the MDEQ will be moving to strike that claim and will be opposing it at any hearing that might be set by the Fergus County District Court.

The Mintyalas filed papers in court in September 2008 stating that they owned all of the items that they now claim are owed by you, and Sandy Mintyala testified to that effect on behalf of Marvin in court in October 2008. When we spoke to you this morning, you could not recall when you purchased or traded for those items. This leads MDEQ to believe that Marvin Mintyala is the true owner of those items, and that it is entitled to sell them to help pay his debt.

WVTMB-SWFSU

Ray Cox

Re: 3rd Party Claim of Items on Mintyala land

September 21, 2009

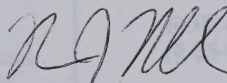
Page 2

The law sets up a process for a third person to claim an interest in property seized subject to an execution sale. It states that the third person may file an affidavit with the Sheriff. Please see Sections 25-13-503 and 27-18-602, Mont. Code Ann. (MCA). Those sections require a claimant to provide, under penalty of perjury, a description of the items claimed and the basis of the claim of ownership. I am sending you notice of the seizure and notice of the need to file an affidavit if you wish to claim the items listed. I am also sending you an affidavit form for you to fill out if you wish to file a claim.

The penalty provided by law for perjury for a material statement made under oath in an official proceeding is up to \$50,000 or 10 years in prison, or both, and the penalty for false swearing that does not qualify as perjury is up to \$500 or six months in jail, or both. Please see Sections 45-7-201 and 202, MCA.

If you file an affidavit to claim an interest in those items, and MDEQ disagrees, it could file a lawsuit and name you as a defendant so the court could determine ownership of the items. Because MDEQ is trying to sell the items this fall before the snow flies, and a sale could be delayed if you make a claim, I would appreciate it if you would let me know as soon as possible if you intend to file a claim.

Sincerely,



Norman J. Mullen
Attorney for Department
406-444-4961 voice; 444-4386 fax
nmullen@mt.gov

encls.

c. DEQ ENF, WUTMB-SW, chron

2. I hereby claim the following property located at 7-B Boyd Creek Rd, Lewistown, MT:

Item	Description	Nature of Ownership Interest/Basis of Claim
------	-------------	---

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC.,
LEWISTOWN LANDFILL, et al ,

Defendants.

Case No.: DV-2000-146

AFFIDAVIT OF

(print name of affiant)

**FOR CLAIM OF PROPERTY
(§ 25-13-503, MCA)**

I, _____, having first been duly sworn under penalty of perjury,
depose and state as follows:

1. I am over the age of 18 and reside at _____ (street address),

(city or town), _____ County, _____ (state of
residence) _____ (zip code).

//

//

2. I hereby claim the following property located at 7-9 Boyd Creek Rd, Lewistown, MT:

Item	Description	Nature of Ownership Interest/Basis of Claim
------	-------------	---

1.		
----	--	--

2.		
----	--	--

3.		
----	--	--

4.		
----	--	--

5.		
----	--	--

6.		
----	--	--

7.		
----	--	--

(attach additional pages in same format if necessary)

(signature of affiant)

STATE OF _____)

County of _____)

The above affidavit was subscribed and sworn to before me by _____
this _____ day of _____, 2009.

NOTARY PUBLIC for the State of _____

SEAL

(printed name of notary)

Title/ rank: _____

Residing at _____

My commission expires: _____

Fergus County Sheriff's Department
PO Box 180
Lewistown MT 59457
406-535-3415

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC.,
LEWISTOWN LANDFILL, et al

Defendants.

Case No.: DV-2000-146

**NOTICE TO 3RD PERSON OF
SEIZURE OF PROPERTY**

NOTICE TO 3RD PERSONS WHO MAY CLAIM INTEREST IN PROPERTY:

A Writ of Execution has been issued by the above-entitled court. Under that Writ of Execution, the Sheriff of Fergus County has levied upon (seized) personal property located on land owned by Marvin and Sandy Mintyala at 7 and 9 Boyd Creek Road, Fergus County Assessor Code No. 0000028600, east of Lewistown in Fergus County, Montana, to satisfy the Judgment on which the Writ of Execution is based.

If you believe the Sheriff has levied the Writ of Execution upon any property to which you have a claim, and you wish to claim that interest, Section 25-13-503, Mont. Code Ann., requires you to submit a written affidavit, signed under penalty of perjury, to the Sheriff of Fergus County. If you plan to claim an interest, you must file the affidavit with the Sheriff within 30 days after it is served to ensure the matter can be addressed before the date set for the Sheriff's sale. Failure to file the affidavit with the Sheriff within 30 days will result in the

Sheriff proceeding forward with an execution sale of the property levied upon. If you have any questions, you are encouraged to contact your attorney. The Sheriff may be contacted as follows:

Fergus County Sheriff's Department
PO Box 180
Lewistown MT 59457
Tel: 406-535-3415

At the same time the affidavit is filed with the Sheriff, the third party should also serve it by mail on the creditor's attorney, who may be contacted as follows:

Department of Environmental Quality
Legal Unit - Norman Mullen
Po Box 200901
Helena Mt 59620-0901
Tel: 406-444-4961

A sample blank affidavit is enclosed with this notice, or you could have your attorney prepare an appropriate affidavit.

Dated this _____ day of September, 2009.

THOMAS L. KILLHAM, SHERIFF

THOMAS L. KILLHAM, SHERIFF

Sent to Reg Cox via certified mail, return receipt requested, on 9/21/09 by Norman J Mullen MT DEQ.

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

Defendant is entitled to a prompt hearing on claimed exemptions. Defendant requests a hearing before the Court on the following exemptions.

Dated this 22 day of Sept 2009.

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Cause No. DV-2000-146

Plaintiff

Vs.

Marvin Mintyala and Sandy Mintyala et al

Defendants

REQUEST FOR HEARING ON
CLAIMED EXEMPTIONS

Defendant represents and petitions the Court as follows:

1. A Judgment was entered against the above Defendant(s) in the above-entitled Court. Upon application to the Court a Writ of Execution was issued. The Sheriff or Levying Officer levied the execution upon property of the Defendant.
2. The Defendant believes the Sheriff or Levying Officer has levied against exempt property. The defendant claims an exemption in the following property as listed in The Notice of Seizure.

Describe the property claimed exempt, and type of exemption:

See attached listing for details.

C: ENF, WUTMB-JV+SW 9/21/09

3. Defendant is entitled to a prompt hearing on claimed exemptions. Defendant requests a hearing before the Court on the claimed exemptions.

Dated this 12 day of Sept, 2009.

Harwin E. Mintyala

Joseph D. Mintyala

66 — CAT D9 18A SER#2958 USED PARTS

62 — CAT REPAIR PARTS

65 — CAT D9 34A SERIAL NUMBER UNKNOWN, ANG DOZER ENGINE APART

2 — CASE 1150 LOADER WITH BUCKET SER#110335 BUCKET & ARMS SER # 102860

80 — 4 IN 1 BUCKET DROT SER# AL30A132

47 — CATERPILLAR REPAIR PARTS BY FUEL SHED

58 & 61 — CAT 70 PULL SCRAPER SER# 5W6150

51, 52 & 57 — CAT DOZER BLADE, TRACKS AND CANOPY FOR D9 CAT

34 — TRACKS FOR CASE 1150 LOADER

32 — CAT PARTS NEAR FUEL SHED TOP OF HILL INCLUDING TRACKS, CANOPY & OTHER PARTS

46 — D9 CAT WITH DOZER

44 — CASE D-9 AND (BACK HOE D100 SER # 1122946)

23 — CAT REPAIR PARTS

40 — OLD FORD COCA COLA TRUCK FULL OF CATERPILLAR SPARE PARTS USED FOR STORAGE

13 & 35 — CANOPY FOR CATERPILLAR D9 PLUS OTHER PARTS

41 — D9 18A SER# 531 WITH HINGED RIPPER

36, 38 & 37 — CAT PARTS FOR SER# 531

35 — D DOZER FOR CAT SER # 531

29 — CAT D9 18A WITH DOZER AND HINGED RIPPER SER# 1694

32 — CAT TRANSMISSION IN FRONT OF JEEP

31 — 1983 CHEVROLET PANEL SER #H5J003841

TO SHERIFF OF FERGUS COUNTY
CLERK OF COURT, MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY
RE: SEIZURE DV-2000146
AUGUST 25, 2009 dated & mailed August 27, 2009

PAGE 1 OF 3

LEGEND

** PROPERTY OF T M STRICKER
**** PROPERTY OF RAY COX
^^^^ PROPERTY OF STEVE MINTYALA
^^ PROPERTY OF OTHERS SEE ITEM

PROPERTY OF T M STRICKER

- ** 66 ---CAT D9 18A SER#2058 USED PARTS
- ** 62--- CAT REPAIR PARTS
- ** 65 ---CAT D9 34A SERIAL NUMBER UNKNOWN, ANGLE DOZER ENGINE APART
- ** 2 ---CASE 1150 LOADER WITH BUCKET SER#7110335 BUCKET & ARMS SER # 102660
- ** 60 ---4 IN 1 BUCKET DROT SER# AL20A132
- ** 47 ---CATERPILLAR REPAIR PARTS BY FUEL SHED
- ** 59 & 61 ---CAT 70 PULL SCRAPER SER# SW6150
- ** 51, 53 & 57 ---CAT DOZER BLADE, TRACKS AND CANOPY FOR D9 CAT
- ** 54 ---TRACKS FOR CASE 1150 LOADER
- ** 52 ---CAT PARTS NEAR FUEL SHED TOP OF HILL INCLUDING TRACKS, CANOPY & OTHER PARTS
- ** 49 ---D2 CAT WITH DOZER
- ** 44 ---CASE DH5 AND (BACK HOE D100 SER # 1122946)
- ** 23 ---CAT REPAIR PARTS
- ** 40 ---OLD FORD COCA COLA TRUCK FULL OF CATERPILLAR SPARE PARTS USED FOR STORAGE
- ** 13 & 39 ---CANOPY FOR CATERPILLER D9 PLUS OTHER PARTS
- ** 41 ---D9 18A SER# 531 WITH HINGED RIPPER
- ** 35, 36 & 37 --- CAT PARTS FOR SER# 531
- ** 38 ---U DOZER FOR CAT SER # 531
- ** 29 ---CAT D9 18A WITH DOZER AND HINGED RIPPER SER# 1694
- ** 32 ---CAT TRANSMISSION IN FRONT OF JEEP
- ** 31 ---1953 CHEVROLET PANEL SER #H53J003841

- ** 30 ---CAT MODEL DW10 SELF PROPELLED SCRAPER
- ** 22 ---CAT ENGINE REPAIR PARTS
- ** 19 ---CAT HEADS 3
- ** 21 ---CAT RADIATOR
- ** 3 ---CAT CANOPY BEHIND OFFICE
- ** 10 ---FINAL DRIVE WITH SPROCKET AND TURN BRAKE IN FRONT OF POLE BARN
- ** 7 ---CAT REPAIR PARTS
- ** 4 ---CAT D9 18A WITH SCRAPER CAT SER# 18A1836
- ** 6 ---INTERNATIONAL TD25 CRAWLER TRACTOR WITH DOZER AND HINGED RIPPER
SER# BP2040

PROPERTY OF RAY COX

- **** 33 & 28 1966 DODGE WRECKER SER # 1481577548 LICENSE 8T2081A
- **** 25 CHEVROLET WINCH 1 1/2 TON WINCH TRUCK
- **** 67 1974 DODGE 300 UTILITY TRUCK
- **** 12 -ENDGATES GOOSENECK TRAILERS
- **** 16 1975 FET GOOSENECK TRAILER SER# 187312640
- **** 15 SCHUSTER GOOSE NECK TRAILER LICENSE # 8TR2808A
- **** 11 1976 CIRCLE J COMBINATION STOCK TRAILER SER # 6418 LICENSE 8TR 310A
- **** OLD AND NEW BRICKS

TO SHERIFF OF FERGUS COUNTY
CLERK OF COURT, MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY
RE: SEIZURE DV-2000146

PAGE 3 OF 3

PROPERTY OF OTHERS SEE ITEM

^^ 27 ---ALLIS CHALMERS HD7 CRAWLER TRACTOR WITH DOZER PROPERTY OF
NORMA IRELAND, Lewistown, Mt

^^^^ 5 ---1981 DODGE 4X4 ¾ TON PICKUP SER# 1B7KW25T9BS184755 ---
PROPERTY OF STEVE MINTYALA

^^^^ 34 ---CHEVROLET PICKUP 1968 SER# KE248J119593 PROPERTY OF
STEVE MINTYALA

^^^^ 18 40 VAN TRAILER ID#4471 ON FRONT PANEL SER# 6H12681-102
PROPERTY OF STEVE MINTYALA

^^^^ 14 ---1967 INTERNATIONAL TRACTOR YELLOW & WHITE SER # 17073
PROPERTY OF STEVE MINTYALA

DATED September 12, 2009

TO THE SHERIFF OF FERGUS COUNTY, MONTANA:

I, Nathan J. Mullin, represent the State of Montana's Department of Environmental
Quality ("Department") in this matter. I am providing you with an original and five copies of a
Writ of Execution issued by the Montana Tenth Judicial District Court for Fergus County. I am
also enclosing an original and five copies of a Notice of Seizure, a Notice of Exception Rights, a
Notice of Sale, a Request for Hearing, and two copies of a Notice to 3rd Parties, a self-addressed

County Fergus
Facility & # CL 302
Closure _____
Finan Assur _____
GW Corr Meas _____
GW Monitoring _____
GW Reports _____
Inspections _____
Other: Litigation

Landfarm
Liner
Methane
O & M
Run - On

Norman J. Mullen
Special Assistant Attorney General
Montana Department of Environmental Quality
1520 E. Sixth Avenue
P.O. Box 200901
Helena, Montana 59620-0901
(406) 444-4961

Attorney for Department

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC.,
LEWISTOWN LANDFILL, et al,

Defendants.

Case No.: DV-2000-146

**PRAECIPE TO SHERIFF-
9th Writ of Execution**

RECEIVED

AUG 13 2009

Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau

TO THE SHERIFF OF FERGUS COUNTY, MONTANA:

I, Norman J. Mullen, represent the State of Montana's Department of Environmental
Quality ("Department") in this matter. I am providing you with an original and five copies of a
Writ of Execution issued by the Montana Tenth Judicial District Court for Fergus County. I am
also enclosing an original and five copies of a Notice of Seizure, a Notice of Exemption Rights, a
Notice of Sale, a Request for Hearing, and two copies of a Notice to 3rd Parties, a self-addressed

WUTMB-SW

1 stamped envelope, and stamped envelopes addressed to Marvin Mintyala, Sandy Mintyala, and
2 Mister M Disposal Inc.

3 I request that you please serve the Writ of Execution, Notice of Seizure, Notice of
4 Exemption Rights, and Request for Hearing upon defendants Marvin Mintyala, Sandy Mintyala,
5 and Mister M Disposal Inc. by delivering a copy to them at their property at 9 Boyd Creek Road
6 east of Lewistown in Fergus County (the Property) and by mailing those documents to them at
7 the address given below. The Department wishes to execute on heavy equipment, motor
8 vehicles, and scrap metal more fully described on Exhibit A to the Notice of Seizure. It is all
9 located at the Property.

10 The items of personal property to be levied upon are large, ponderous and incapable of
11 manual delivery. It is therefore proper to levy upon them where they are located, without seizure
12 and transport to an impound lot. See Corpus Juris Secundum, at Executions § 111(b), which
13 states that on a writ of execution, the sheriff or levying officer may seize and levy upon large or
14 ponderous items on site, rather than having to take them into possession, move, and store them.

15 Please post the Notice of Seizure at the gate to the Property. That gate has a lock on it,
16 and the Department and the Mintyalas have keys to it. Since the Mintyalas may be using the
17 gate to gain access to their mobile home and a camp trailer currently at the Property, it does not
18 seem useful to put another lock on the gate.

19 Once the items have been levied upon, I request that you sell them at a Sheriff's Sale. I
20 believe it is necessary to have a walk-through before the sale at the Property with potential
21 bidders. I believe it would be appropriate to obtain a court order authorizing the walk-through,
22 and for authorization for the successful bidder to enter onto and remain on the Property for up to
23 30 days to remove the purchased personal property. To do this, I believe I will need to give the
24 court specific dates for the walk-through and the sale. So, I believe it makes the most sense to

1 hold off on issuing the Notice of Sheriff's Sale until the 10-day exemption/objection deadline has
2 passed. Then, I will ask the court to issue an order authorizing the walk-through and the
3 successful bidder's entry to coordinate with the dates you set for the walk-through and sale.
4 I have provided a Notice of Sale for posting and for use in publishing an advertisement in
5 the local newspaper. Please do not start the notification process until the 10-day
6 exemption/objection period has passed, and until I have obtained a court order as discussed
7 above. I request that, in the Notice of Sale, you condition the sale on acceptance by the bidders
8 of the terms in the Agreement that I am submitting with this Praeceptum. The Agreement is based
9 on the language used in the Department's junk vehicle crushing contracts.

10 The Mintyals have said that they live in the Lewistown area at the Property in summer,
11 but the Department's inspectors have not seen them or heard that they are in the area this
12 summer. If the Mintyals cannot be found at that Property, their last known address is Marvin
13 and Sandy Mintyala, 1265 Elm Street #34, Clarkston WA 99403-2374. Please also send the
14 papers to Mister M Disposal Inc. to the Mintyals' address in Clarkston, c/o Marvin Mintyala.

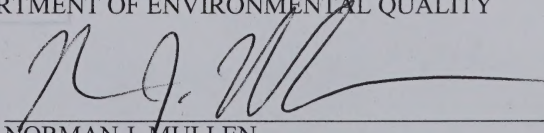
15 Please mail the Notice to 3rd Parties to Tina M Mintyala-Stricker at 3210 Lindell Rd NE
16 Olympia WA 98506. The Department does not have an address for Steve Mintyala.

17 When you mail me your return of service for the Writ of Execution in the SASE, please
18 also include the service of the Notices of Seizure and Exemption Rights and Notice to 3rd Parties.

19 If you have any questions or comments, please call me at (406) 444-4961. Thank you
20 very much for your assistance.

21 DATED August 12, 2009. STATE OF MONTANA
22 DEPARTMENT OF ENVIRONMENTAL QUALITY

23 By:

24 
NORMAN J. MULLEN
Special Assistant Attorney General

Norm Mullen
Special Assistant Attorney General
Montana Department of Environmental Quality
1520 E. Sixth Avenue
P.O. Box 200901
Helena, Montana 59620-0901
(406) 444-4961

Attorney for Department

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel. DEPARTMENT
OF ENVIRONMENTAL QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC., LEWISTOWN
LANDFILL, DOMENIC MASSARI, as trustee
for trust holding money in SouthTrust Asset
Management Co. trust account # 2640000519,
CUMBERLAND CASUALTY & SURETY
COMPANY, a Florida Corporation, as
beneficiary of trust holding money in SouthTrust
Asset Management Co. trust account #
2640000519, and SOUTHTRUST ASSET
MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding money
in SouthTrust Asset Management Co. trust
account # 2640000519,

Defendants.

Case No.: DV-2000-146

**NINTH WRIT OF
EXECUTION**

1 **FROM THE STATE OF MONTANA TO THE SHERIFF OF FERGUS COUNTY OR**
2 **LEVYING OFFICER:**

3 WHEREAS, on September 13, 2002, the State of Montana ex rel. Department of
4 Environmental Quality obtained a judgment in the Montana Tenth Judicial District Court, Fergus
5 County, against Marvin Mintyala, Sandy Mintyala, and Mister "M" Disposal Inc., as follows:

6	Original or Balance Due on Judgment in the amount of:	\$ 318,363.26
7	Amount of judgment for which execution issued on 9/18/03	131,556.10
8	Amount of judgment for which execution issued on 3/4/04	134,942.88
9	Amount of judgment for which execution issued on 7/12/04	136,382.53
10	Amount of judgment for which execution issued on 1/20/05	139,405.68
11	Amount of judgment for which execution issued on 1/12/06	142,825.66
12	Amount of judgment for which execution issued on 6/13/06	144,182.40
13	Amount of judgment for which execution issued on 7/24/08	166,970.80
14	Amount of judgment for which execution issued on 8/11/08	167,529.48

15 **Total sum due and owing on August 3, 2009 after credits and costs:** \$ 175,144.47

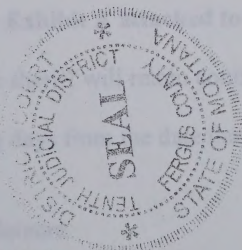
16 The basis for these amounts is found in the affidavit of Norman J. Mullen, which is attached to
17 this Writ.

18 NOW, you, the sheriff or levying officer, are hereby required to make this sum due on the
19 judgment or damages, with interest, costs, and accruing costs, to satisfy the judgment out of the
20 PERSONAL PROPERTY and WAGES of the debtor, Marvin Mintyala, Sandy Mintyala, and
21 Mister M Disposal Inc., NOT EXEMPT FROM EXECUTION on the day on which the judgment
22 was docketed in Fergus County, or at any time hereafter, and return this writ not less than 10
23 days nor more than 120 days after the date of issuance subscribed thereon, with a record of your
24 actions endorsed thereon.

Given under my hand this 5th day of August, 2009.

CLERK OF DISTRICT COURT

By: Phyllis D Smith



Fergus County Sheriff's Department
Civil Unit
PO Box 180
Lewistown, Mt. 59457
406-535-3415

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC.,
LEWISTOWN LANDFILL, et al,

Defendants.

Case No.: DV-2000-146

NOTICE OF SEIZURE

The enclosed is a copy of a writ of execution that was served on you,

_____ (name) (☐ personally) (☐ by mail) on the _____ day of

_____, 2009. The Fergus County Sheriff has levied upon the following property at 7

Boyd Creek Road, Fergus County, Montana:

See Exhibit A attached to this Notice

The sheriff will retain control of the above property at 7 Boyd Creek Road for a period of
10 working days from the date the property was seized. Failure to file a claim of exemption

//
Notice of Seizure

Page 2

1 within 10 days will result in the sheriff proceeding forward with an execution sale of the property
2 levied upon.

3 If you have any questions or plan to claim an exemption, you may wish to contact your
4 attorney, or the Clerk of the 10th Judicial District Court, Phyllis D. Smith, at 712 W Main
5 Lewistown MT 59457, (406) 535-5026 (voice), 406-535-6076 (fax).

6 Dated this ____ day of _____, 2009.

7
8 THOMAS L. KILLHAM, SHERIFF

9
10 _____
11 PEGGY L. SANDMAN,
12 COMMUNICATIONS OFFICER
13
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	Make	Model	Color	VIN #	License #	Comments	Reg. Owner	Street/PO Box	City	State	Zip Code
1	Ford		White	1FDWD74N5BVJ274373			No Records Available				
2	Mack	Truck	Yellow	No Vin Available		No Rear End	No Records Available				
3	Ford	Truck	White	07-79	8T-13506	Garbage Truck	Mintyala, Marvin E.	Gilt Edge Rte	Lewistown	MT	59457
4	Ford		Yellow	No Vin Available	8T-6216		No Records Available				
5	Ford	Car	Green	FY6E2Y4FY6B06059868		Car Body Only	No Records Available				
6	Jeep	Cherokee	Yellow/Brown	J6F16MA059934	8A-AB40		Martin, John	144 Saphire Drive	Lewistown	MT	59457
7	Dodge	Utility Truck	White	D31BJ2S550039			Mintyala, Marvin E.	HC 85 Box 4066	Lewistown	MT	59457
8	GMC		Blue	TKL147J501036			Mintyala, Marvin E.	Gilt Edge Rte	Lewistown	MT	59457
9	Dodge	Club Cab	White	W17AE45009232			No Records Available				
10	GMC	Garbage Truck	White	TCM67TV602224			Mister M Disposal, Inc.	HC 85 Box 4066	Lewistown	MT	59457
11	Ford	Garbage Truck	Orange	C75FUB29447			Mintyala, Marvin E.	Gilt Edge Rte	Lewistown	MT	59457
12	Ford	Garbage Truck	White	No Vin Available		Mister M Disposal	No Records Available				
13	Ford	Cab	White	CHASS1S-CAB ???? ?	8T-7970		No Records Available				
14	Ford		Blue	C76EUG61582			No Records Available				
15	Ford		White	No Vin Available	8T-8088		No Records Available				
16	Mercury	Car	Brown	F8K35T529372	8P-1505A		Elfering, Thomas	243 SW Cedar	Lewistown	MT	59457
17	Ford	Truck	White	No Vin Available	8T-4103	Lewistown Coke	No Records Available				
18	Winnebago	Motorhome	White/Crème	6381860945	8P-2154A		Mintyala, Marvin and Sandra	HC 85 Box 4066	Lewistown	MT	59457
19	Hi	Truck	Yellow/White	17073			No Records Available				
20	Chevrolet	Pick-up	Green/Red	CE330S170736			No Records Available				
21											
22	Ford	500 Truck	Blue	F50CKH50338	8T-386		Mintyala, Marvin E.	Gilt Edge Rte	Lewistown	MT	59457
23	Ford	750 Truck	White	N75KU720591			No Records Available				
24	Jeep	Wagon 4WD	White/Gray	No Vin Available			No Records Available				
25	Ford	C-800	Red	No Vin Available		Cab Only	No Records Available				
26	Garbage Compactor		White	No Vin Available			No Records Available				
27	Ford	Pick-up/Dually	Blue/White Top	T70D0U12018	8T-14706	Double dually w/no box	Mintyala, Marvin E.	Gilt Edge Rte	Lewistown	MT	59457
28	Ford	Garbage Truck	White/Blue Primer	C75EUB14691	8T-2082A		Mister M Disposal, Inc.	HCR 85 Box 4066	Lewistown	MT	59457
29	Chevrolet	Garbage Truck	White	Partial Vin - 7769?	8-417		No Records Available				
30	Chevrolet	Pick-up	Brown/White Top	No Vin Available	8T-5094		No Records Available				
31	Chevrolet	Thriftmaster	Blue, Brown, Green	53J003841			No Records Available				
32	Ford	Garbage Truck	White	No Vin Available	8T-4514		No Records Available				
33	Dodge	500 Pick-up	Orange	M6D5 H06924		No Bed	No Records Available				
34	Dodge	Club Cab 4x4	Brown 2 tone	187KW25T9BS184755			M and S Enterprises	201 E Lyndale PMB 119	Helena	MT	59601
35	Chevrolet '85'	Pick-up	Brown 2 tone	1CCHK34JOFS145263			No Records Available				
36	Ford	Garbage Truck	Red/White box	F75FUA30621			Mintyala, Marvin E.	Gilt Edge Rte	Lewistown	MT	59457
37	GMC '84'	Garbage Truck	Blue/Blue box	1GDS7D4G4BV582947			No Records Available				
38	GMC 8500	Garbage Truck	White/White box	TCE678V565132			Mister M Disposal, Inc.	HC 85 Box 4066	Lewistown	MT	59457
39	Ford 750	Garbage Truck	Red/White box	C76FUF92547		Cab Over style	No Records Available				
40	Mack	Garbage Truck	Green/White	MB401 P 2569			No Records Available				
41	International	Garbage Truck	White/White box	416080g177738		Loadstar 1600					
42	International	Garbage Truck	White	FD117956 F		No Bed					
43	Ford	Garbage Truck	White/White box	No Vin Available		No Doors					
44	Dodge	400 Tow Truck	White & Maroon	11029349							
45	Ford '40's'	Winch/Tow Truck	Red	No Vin Available		No doors					
46	Mercury '80's'	Zephyr Sedan	Blue	No Vin Available							
47		Crawler	Yellow			Front roll cage with two braces and a round black feature on the cab					
48		Crawler	Yellow			No enclosure for operator					

EXHIBIT

tabbler

A

[illegible]

Fergus County Sheriff's Department
Civil Unit
PO Box 180
Lewistown, Mt. 59457
406-535-3415

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC.,
LEWISTOWN LANDFILL, et al,

Defendants.

Case No.: DV-2000-146

NOTICE OF EXEMPTIONS

NOTICE TO THE ABOVE NAMED DEFENDANTS:

A Writ of Execution has been issued by the above-entitled court. The Sheriff of Fergus County has been instructed to levy that execution upon your property, not exempt by law, to satisfy the Judgment upon which the Writ of Execution is based.

A partial list of exemptions to which you may be entitled follows:

Personal Earnings

Definitions:

"Earnings": Compensation for personal services, whether called wages, salary, commissions, bonuses and payments to a pension or retirement program.

"Disposable Income": Earnings after deductions required by law (Federal and State withholding).

1 "Garnishment": Any legal or equitable procedure by which earnings of an
2 individual are required to be withheld for payment of a debt.

3 MAXIMUM garnishment is LESSER of:

4 25% of disposable earnings, or

5 The amount of disposable earnings for the pay period exceeding 30 times the federal
6 minimum hourly wage.

7 The State of Montana had adopted the same formula as the federal law concerning wage
8 exemptions. Section 25-13-614, Montana Codes Annotated (M.C.A.)

9 Personal Property

10 The judgment debtor's interest not to exceed \$4,500.00 in aggregate value, to the
11 extent of a value not exceeding \$600.00 in any item of property in household
12 furnishings and goods, appliances, jewelry, wearing apparel, books, firearms and
13 other sporting goods, animals, feed crops and musical instruments. Section 25-
14 13-609(1), M.C.A.

15 Motor Vehicle

16 The judgment debtor's interest not to exceed \$2,500.00 in value, in one motor
17 vehicle. Section 25-13-609(2), M.C.A.

18 Property Required in Trade or Profession

19 The judgment debtor's interest, not to exceed \$3,000.00 in value, in any
20 implements, professional books, or tools, of the trade of the judgment debtor or a
21 dependent of the judgment debtor. Section 25-13-609(3), M.C.A.

22 Unmatured Life Insurance Contracts

23 The judgment debtor's interest, not to exceed \$4,000.00 in value, in any
24 unmaturred life insurance contracts owned by him. Section 25-13-609(4), M.C.A.

Real Property - the Homestead Exemption

1. The homestead consists of the dwelling house or mobile home, and all
appurtenances in which the claimant resides and the land, if any, on which the
same is situated. Section 70-32-101, M.C.A.

2. A homestead may not exceed in value \$250,000.00. 70-32-104, M.C.A.

If you believe the Sheriff has levied the Writ of Execution upon and taken any property to
which you are entitled to an exemption, you must file a claim in writing with the clerk of the
above entitled court so they can make arrangements for a hearing to determine whether the
property is exempt. If you plan to claim an exemption, you must do this within 10 working days
from the date the monies or property is seized. Failure to file a claim within 10 working days
will result in the sheriff releasing the monies executed upon or proceeding forward with an
execution sale of any property obtained. For more information, contact the Clerk of the 10th
Judicial District Court at 712 W Main Lewistown MT 59457, (406) 535-5026 (voice), 406-535-
6076 (fax).

THOMAS L. KILLMAN, SHERIFF

PEGGY L. SANDMAN,
COMMUNICATIONS OFFICER

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC.,
LEWISTOWN LANDFILL, et al

Defendants.

Case No.: DV-2000-146

REQUEST FOR HEARING

Defendant _____ (name) requests a hearing in order to
assert a claim to exemption of certain property upon which Plaintiff has executed, and/or to
contest the manner or form in which the Writ of Execution was issued.

The address at which the Court Clerk should notify the Defendant of the date, time, and
place of the hearing is:

Name

P.O. Box or Street Address

Apt./Lot #

City

State

Zip Code

1 Dated this _____ day of _____, 2009.

2 THOMAS L. KILLHAM, SHERIFF

3 Norman J. Mullen, Attorney
4 Montana Department of Environmental Quality
5 P.O. Box 200901
6 Helena, Montana 59620-0901

7 _____
8 PEGGY L. SANDMAN,
9 COMMUNICATIONS OFFICER

10 Date: _____

11 _____
12 Defendant's Signature

13 Mail original to: Clerk of Court
14 Tenth Judicial District
15 712 W Main
16 Lewistown MT 59457

1 I hereby certify that, on the date I signed and dated this Request below, I mailed or
2 delivered a copy of this Request to the Plaintiff's attorney at the following address:

3 Norman J. Mullen, Attorney
4 Montana Department of Environmental Quality
5 P.O. Box 200901
6 Helena, Montana 59620-0901

7 Date: _____

8 Defendant's Signature _____

9 Mail original to: Clerk of Court
10 Tenth Judicial District
11 712 W Main
12 Lewistown MT 59457

Case No.: DV-3030-146

13 STATE OF MONTANA
14 DEPARTMENT OF ENVIRONMENTAL
15 QUALITY

16 Plaintiff,

SHERIFF'S SALE

17 MARVIN MINTYALA and SANDY
18 MINTYALA, as individuals and as officers,
19 owners, and shareholders of Mister "M"
20 Disposal Inc., MISTER "M" DISPOSAL,
21 MISTER "M" DISPOSAL INC.,
22 LEWISTOWN LANDFILL, et al.

23 Defendants.

24 To be sold at sheriff's sale on the ____ day of _____, 2009, at _____ AM/PM, at _____

1. Auctioneer

2. One bid, for scrap metal value by total tons multiplied by price per ton only

3. Eight cubic yds. for tracked heavy equipment vehicles

4. Three scrapers

5. A tractor

6. Three trailers

7. Approximately 50 motor vehicles, including garbage and pickup trucks, and cars

8. Various scrap metal

Fergus County Sheriff's Department
Civil Unit
PO Box 180
Lewistown, Mt. 59457
406-535-3415

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC.,
LEWISTOWN LANDFILL, et al,

Defendants.

Case No.: DV-2000-146

SHERIFF'S SALE

To be sold at sheriff's sale on the ____ day of _____, 2009, at ____ AM/PM, at

Two lots:

One lot, for scrap metal value by total tons multiplied by price per ton only:

Eight crawler tracked heavy equipment vehicles
Three scrapers
A tractor
Three trailers
Approximately 50 motor vehicles, including garbage and pickup trucks, and cars
Various scrap metal

1 A second lot, of bricks.

2 A more detailed listing of the property to be sold is attached as **Exhibit A**. The terms of
3 this sale are attached as **Exhibit B**.

4 A walk-through for potential bidders to view the sale items will be held at 9 Boyd Creek
5 Road on the ____ day of _____, 2009, at ____ AM/PM. The sale is subject to the terms
6 contained in an Agreement available from the Fergus County Sheriff at the address on this
7 notice.

8 **FERGUS COUNTY SHERIFF**

9 BY _____

10 MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

11 STATE OF MONTANA et al.
12 DEPARTMENT OF ENVIRONMENTAL
13 QUALITY,

14 Plaintiff,

15 Case No.: DV-2008-146

16 NOTICE TO 3RD PERSON OF
17 SEIZURE OF PROPERTY

18 MARVIN MINTYALA and SANDY
19 MINTYALA, as individuals and as officers,
20 directors, and shareholders of Mister "M"
21 Disposal Inc., MISTER "M" DISPOSAL,
22 MISTER "M" DISPOSAL INC.,
23 LEWISTOWN LANDFILL, et al

24 Defendant.

25 NOTICE TO 3RD PERSONS WHO MAY CLAIM INTEREST IN PROPERTY:

26 A Writ of Execution has been issued by the above-captioned court. Under that Writ of
27 execution, the Sheriff of Fergus County has levied upon (seized) personal property located on
28 property owned by Marvin and Sandy Mintyala at 9 Boyd Creek Road, east of Lewistown in Fergus
29 County, Montana, to satisfy the judgment on which the Writ of Execution is based.

30 If you believe the Sheriff has levied the Writ of Execution upon any property to which
31 you have a claim, and you wish to claim that interest, Section 25-13-303, Mont. Code Ann.,
32 and you to submit a written affidavit, signed under penalty of perjury, to the Sheriff of
33 Fergus County. If you plan to claim an interest, you must file the affidavit with the Sheriff
34 within 30 days after it is served to ensure the matter can be addressed before the date set for the
35 Sheriff's sale. Failure to file the affidavit with the Sheriff within 30 days will result in the

Fergus County Sheriff's Department
Civil Unit
PO Box 180
Lewistown MT 59457
406-535-3415

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC.,
LEWISTOWN LANDFILL, et al

Defendants.

Case No.: DV-2000-146

**NOTICE TO 3RD PERSON OF
SEIZURE OF PROPERTY**

NOTICE TO 3RD PERSONS WHO MAY CLAIM INTEREST IN PROPERTY:

A Writ of Execution has been issued by the above-entitled court. Under that Writ of Execution, the Sheriff of Fergus County has levied upon (seized) personal property located on land owned by Marvin and Sandy Mintyala at 9 Boyd Creek Road, east of Lewistown in Fergus County, Montana, to satisfy the Judgment on which the Writ of Execution is based.

If you believe the Sheriff has levied the Writ of Execution upon any property to which you have a claim, and you wish to claim that interest, Section 25-13-503, Mont. Code Ann., requires you to submit a written affidavit, signed under penalty of perjury, to the Sheriff of Fergus County. If you plan to claim an interest, you must file the affidavit with the Sheriff within 30 days after it is served to ensure the matter can be addressed before the date set for the Sheriff's sale. Failure to file the affidavit with the Sheriff within 30 days will result in the

1 Sheriff proceeding forward with an execution sale of the property levied upon. If you have any
2 questions, you are encouraged to contact your attorney. The Sheriff may be contacted as follows:

3 Fergus County Sheriff's Department
4 Civil Unit
5 PO Box 180
Lewistown MT 59457
Tel: 406-535-3415

6 At the same time the affidavit is filed with the Sheriff, the third party should also serve it by mail
7 on the creditor's attorney, who may be contacted as follows:

8 Department of Environmental Quality
9 Legal Unit - Norman Mullen
10 Po Box 200901
11 Helena Mt 59620-0901
Tel: 406-444-4961

A sample blank affidavit is enclosed with this notice, or you could have your attorney prepare an appropriate affidavit.

12 Dated this _____ day of _____, 2008.

13 THOMAS L. KILLHAM, SHERIFF

14
15 PEGGY L. SANDMAN,
16 COMMUNICATIONS OFFICER

2. I hereby claim the following property located at 9 Boyd Creek Rd, Lewistown, MT:

Item	Description	Nature of Ownership Interest/Basis of Claim
------	-------------	---

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC.,
LEWISTOWN LANDFILL, et al ,

Defendants.

Case No.: DV-2000-146

AFFIDAVIT OF

(print name of affiant)

**FOR CLAIM OF PROPERTY
(§ 25-13-503, MCA)**

I, _____, having first been duly sworn under penalty of perjury,

depose and state as follows:

1. I am over the age of 18 and reside at _____ (street address),
_____, _____ (city or town), _____ County, _____ (state of
residence) _____ (zip code).

//

//

2. I hereby claim the following property located at 9 Boyd Creek Rd, Lewistown, MT:

Item	Description	Nature of Ownership Interest/Basis of Claim
------	-------------	---

- | | | |
|----|--|--|
| 1. | | |
| 2. | | |
| 3. | | |
| 4. | | |
| 5. | | |
| 6. | | |
| 7. | | |

(attach additional pages in same format if necessary)

(signature of affiant)

STATE OF _____)

County of _____)

The above affidavit was subscribed and sworn to before me by _____
this _____ day of _____, 2009.

NOTARY PUBLIC for the State of _____

SEAL

(printed name of notary)

Title/ rank: _____

Residing at _____

My commission expires: _____

AGREEMENT ON CONDITIONS TO SHERIFF'S SALE OF SCRAP METAL

These conditions pertain to the Sheriff's Sale in State of Montana ex rel Department of Environmental Quality v. Marvin Mintyala, Sandy Mintyala, Mister "M" Disposal Inc., et al, Montana 10th Judicial District Court Case No. DV 2000-146. In that Sheriff's Sale, the Fergus County Sheriff will offer for sale heavy equipment, motor vehicles, and scrap metal (the "Materials") at 9 Boyd Creek Road, Fergus County, Montana. The successful bidder agrees to the following:

SECTION I: SERVICES

A. Bidder agrees to do the following concerning the Materials at the **Marvin and Sandy Mintyala** property at 9 Boyd Creek Road, Fergus County, Montana (the "Property"):

1. Prepare all Materials at the Property for removal, transport, and recycling.
2. Operate in such a manner as to not violate any laws or rules of the State of Montana, including, but not limited to, the Montana Clean Air Act and the Montana Solid Waste Management Act or any federal laws and rules; Bidder shall transport the Materials in such a manner as to not allow any debris or garbage to be deposited on the roadways or other land. Should any debris or garbage escape during transport, Bidder shall clean up such material and dispose of it in the local licensed landfill.
3. Not burn anything at the Property, and to provide adequate fire protection equipment to control any and all fires that may occur as a result of performance of this contract.
4. Repair any damage to the Property, including fences, caused by Bidder's performance of this purchase to the satisfaction of the Fergus County Sheriff as soon as possible after it occurs.
5. Consult with Joseph Blaine of the Montana Department of Environmental Quality's Solid Waste Section, PO Box 200901 Helena MT 59620-0901, ph. 406-444-9879, email JBlaine@mt.gov concerning protection of the integrity of the landfill cap and other systems at the Property and conduct all work necessary to remove Materials purchased in a manner that protects the integrity of the landfill cap and monitoring wells at the Property as shown in a map attached to this Agreement, and use Best Management Practices such as route selection, signs, caution tape, or temporary fencing to avoid damaging ponds, buildings, or other landfill facilities or systems. Bidder shall rehabilitate and revegetate marks made by its vehicles as necessary to avoid erosion.
6. Recycle all Materials as scrap, and not sell uncrushed heavy equipment, motor vehicles, or motor vehicle component parts removed from the Property

7. Contact, at least **24 hours prior to beginning removal of the Materials and, again, prior to completing its removal**, the Sheriff's liaison to this Agreement noted in Section XIII. Entering the property without first contacting this person could be considered a criminal trespass.

B. Bidder is aware, and agrees, that because some of the work might have to take place after 5:00 p.m. on a weekday, or on a weekend, it must make arrangements with the Sheriff to arrive at and leave the Property only at times authorized by Court order. Bidder is responsible for securing the Materials it purchased. If Bidder requires security services of the Sheriff or a third party for which a charge will be made, Bidder is responsible for those costs.

C. Bidder shall provide the Sheriff, within 15 days after Bidder removes all Materials and completes work at the site, with a report that documents the weight of the scrap metal removed, and the hours worked each day.

SECTION II: DATES TO COMMENCE AND COMPLETE SERVICES

Bidder shall complete removal from the Property of the Materials listed in Section IA 1 within **30 days after the sheriff's sale**.

SECTION III: CONSIDERATION

In consideration for receiving the Materials at the Property, Bidder shall pay the Sheriff at the Sale an amount that equals the Bidder's estimate of the number of tons of metal there multiplied by the price per ton offered by Bidder. At the time Bidder documents the weight of the Materials removed under Section I.C., if the weight of the Materials removed was greater than that estimated, Bidder shall pay the Sheriff for the additional tonnage multiplied by the price per ton offered by Bidder at the Sale. If the weight removed was less than that estimated, the Sheriff shall reimburse Bidder for the excess of the tonnage bid over that removed multiplied by the price per ton offered by Bidder at the Sale.

SECTION IV: JURISDICTION AND VENUE

The laws of Montana govern this Sale and Agreement. The parties agree that any litigation concerning this Agreement must be brought in the Tenth Judicial District in and for the County of Fergus, State of Montana, and the parties consent to personal jurisdiction, subject matter jurisdiction, and venue in that court. Each party shall pay its own costs and attorney fees.

SECTION V: MODIFICATION AND PREVIOUS AGREEMENTS

This Agreement, with the bid sheet submitted by successful Bidder, contains the entire agreement between the parties, and no statements, promises, or inducements made by either party that are not contained in this Agreement are valid or binding. This Agreement may not be enlarged, modified, or altered except by a writing signed by both parties. No change, addition, or erasure of any printed portion of this Agreement is valid or binding upon either party.

SECTION VI: ACCOUNTING, AUDITING, RECORD RETENTION, COST PRINCIPLES, AND ACCESS TO RECORDS

1. Bidder shall maintain books, records, documents, other evidence directly pertinent to performance of work under Agreement and current accounting for all funds received and expended pursuant to Agreement in accordance with generally accepted accounting principles. Bidder's accounting system must be able to allocate costs associated with Agreement in a manner that keeps these costs separate from the costs of other contracts.
2. Bidder shall provide the Sheriff access to all such books, records, documents of the activities covered by Agreement, as may be necessary in determining compliance with the terms of Agreement
3. Audits conducted under this provision must be in accordance with generally accepted auditing standards as established by the American Institute of Certified Public Accountants and with established procedures and guidelines of the reviewing or auditing agency(ies).
4. Bidder agrees to disclose all information and reports resulting from access to the records maintained in paragraph (1) of this section to Sheriff.
5. Bidder agrees to retain all financial records for three years.
6. Bidder shall provide the Sheriff access to records at any reasonable time for as long as Bidder maintains the records.

SECTION VII: SEPARABILITY

A declaration by any court, or any other binding legal source, that any provision of this Agreement is illegal and void shall not affect the legality and enforceability of any other provision of this Agreement Conditions, unless the provisions are mutually dependent.

SECTION VIII: HOLD HARMLESS AND INDEMNIFICATION

Bidder agrees to protect, defend, and save the Sheriff, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Bidder's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts, omissions or negligence of Bidder and/or its agents, employees, representatives, assigns, subcontractors or from Bidder's failure to comply with the requirements of this Agreement or with all federal, state, and local laws, rules, regulations, and ordinances applicable to the work to be done under Agreement, except the sole negligence of Sheriff.

SECTION IX: ASSESSED PENALTIES

1. If all materials are not removed from the Property by 30 days after the sale, Bidder shall pay Sheriff one thousand dollars (\$1,000) per day for each additional day until all materials are removed.

SECTION X: INDEPENDENT CONTRACTOR STATUS AND WORKERS' COMPENSATION

1. The parties to Agreement agree that Bidder is an independent contractor. Bidder represents and agrees that no agent, employee, or servant of Bidder is or may be deemed to be the employee, agent, or servant of Sheriff. Bidder is solely and entirely responsible for the acts of its employees, agents, servants, and subcontractors during the performance of Agreement. As an independent contractor, Bidder agrees that it, not Sheriff, is responsible for providing benefits to its employees, agents, or servants, including, but not limited to, unemployment insurance and workers' compensation coverage, and covenants that it will continue to provide legally required benefits during the term of Agreement.
2. Bidder is required to comply with the provisions of the Montana Workers' Compensation Act while performing work subject to this Agreement.

SECTION XI: GENERAL LIABILITY INSURANCE

1. **General Requirements:** Bidder shall maintain, for the duration of Agreement, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability which may arise from or in connection with the performance of the work by Bidder, and/or its agents, employees, assigns, or subcontractors. The insurance shall cover such claims as may be caused by any negligent act or omission by Bidder, and/or its agents, employees, assigns, or subcontractors.
2. **Primary Insurance:** Bidder's insurance coverage shall be primary insurance with respect to the Sheriff, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by Sheriff, its officers, officials, employees or volunteers shall be in excess of Bidder's insurance and shall not contribute with it.
3. **Specific Requirements for Commercial General Liability:** Bidder shall purchase and maintain Occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$500,000 per occurrence and \$1,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Bidder and/or its officers, agents, representatives, assigns or subcontractors.
4. **Specific Requirements for Automobile Liability:** Bidder shall purchase and maintain coverage with split limits of \$500,000 per person (personal injury), \$1,000,000 per accident (personal injury), and \$100,000 per accident (property damage) to cover such claims as may be caused by any act, omission, or negligence of Bidder and/or its officers, agents, representatives, assigns or subcontractors.
5. **Additional Insured Status:** Bidder shall cover Sheriff, its officers, officials, employees, and volunteers as additional insureds for liability arising out of: activities performed by or on behalf of Bidder, including the insured's general supervision of Bidder; products and completed operations; premises owned, leased, occupied, or used; and for automobiles owned, leased, hired, or borrowed by Bidder.
6. **Deductibles and Self-Insured Retentions:** Any deductible or self-insured retention must be declared to and approved by Sheriff. At the request of Sheriff either:
 - a. Bidder shall reduce or eliminate such deductibles or self-insured retention with respect to Sheriff, its officers, officials, employees, and volunteers; or
 - b. Bidder shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

7. Certificate of Insurance/Endorsements: Bidder shall cause a certificate of insurance to be delivered to Sheriff within 10 days after the signing of Agreement. The certificate must indicate compliance with the insurance coverages and the required limits set forth in this section of Agreement. The required insurance must be maintained in force and effect for the duration of Agreement. Bidder shall notify Sheriff immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. Failure to comply with this requirement may result in termination per Section IV of Agreement.

SECTION XII: REGISTRATION WITH THE SECRETARY OF STATE

A business intending to transact business in Montana must register with the Secretary of State. If Bidder was created in another state or country, and is transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA, it must register with the Secretary of State and obtain a certificate of authority to show that it is in good standing in Montana. A copy of the certificate or, if this is the first time Bidder has done business in Montana, proof of application for certificate, must be provided to Sheriff before Bidder starts work at the Property.

SECTION XIII: LIAISONS

Bidder's liaison to Sheriff for purposes of Agreement is _____ or successor at Bidder's address listed below. [phone: _____]

Sheriff's liaison to Bidder for purposes of Agreement is Peggy Sandman or successor at Fergus county Sheriff- Civil Division at Sheriff's address listed below, and at 406-535-3415 (voice) and 406-535-3860 (fax).

SECTION XIV: EXECUTION

This Agreement consists of 7 pages. The original is to be retained by Sheriff. A copy of the original has the same force and effect for all purposes as the original.

To express the parties' intent to be bound by the terms of Agreement, they have executed this document on the dates set out below.

BIDDER: _____

Date

BY:

Signature

Printed name and title

(address)

(Federal Employer's ID # or, if none, Social Security #)

FERGUS COUNTY SHERIFF

Date

BY:

Signature

Printed name and title

STATE OF MONTANA et al,
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as
partners, and shareholders of Mister
Disposal Inc., MISTER "M" DISPOSAL
INC.,
LEWISTOWN LANDFILL, DOMENIC
MASSARI, as trustee for trust holding money
in SouthTrust Asset Management Co. trust
account # 2640000519, CUMBERLAND
CASUALTY & SURETY COMPANY, a
Florida Corporation, as beneficiary of trust
holding money in SouthTrust Asset
Management Co. trust account # 2640000519,
and SOUTHTRUST ASSET
MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding
money in SouthTrust Asset Management Co.
trust account # 2640000519,

Defendants.

County Fergus
Facility & # CL-302
Closure Landfarm
Finan Assur Liner
GW Corr Meas Methane
GW Monitoring O & M
GW Reports Run - On
Inspections
Other: Litigation

RECEIVED

AUG 05 2009

Dept. of Environ. Quality
Waste & Underground
Tank Management Bureau

Norm Mullen
Special Assistant Attorney General
Montana Department of Environmental Quality
1520 E. Sixth Avenue
P.O. Box 200901
Helena, Montana 59620-0901
(406) 444-4961

Attorney for Department

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC.,
LEWISTOWN LANDFILL, DOMENIC
MASSARI, as trustee for trust holding money
in SouthTrust Asset Management Co. trust
account # 2640000519, CUMBERLAND
CASUALTY & SURETY COMPANY, a
Florida Corporation, as beneficiary of trust
holding money in SouthTrust Asset
Management Co. trust account # 2640000519,
and SOUTHTRUST ASSET
MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding
money in SouthTrust Asset Management Co.
trust account # 2640000519,

Defendants.

Case No.: DV-2000-146

**PRAECIPE TO CLERK OF COURT-
Ninth Writ of Execution**

SW- WUTMB 8/3/09

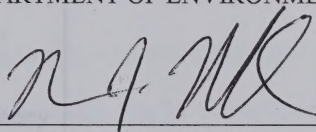
1 The State of Montana, ex rel. Department of Environmental Quality ("Department"),
2 through its counsel, Norman J. Mullen, is submitting an original proposed Ninth Writ of
3 Execution directed to the Sheriff of Fergus County or levying officer, an affidavit supporting the
4 issuance of the Writ, six copies of the Writ, and a self-addressed, stamped envelope (SASE).

5 The Department requests that the Clerk issue the Writ of Execution and conform the
6 copies. Please send the conformed copies back to me in the SASE provided. I will send them to
7 the Sheriff for service.

8 The Department requests the Court Clerk to please contact the undersigned attorney with
9 any questions or comments, and appreciates the assistance of the Court Clerk and her staff.

10
11 DATED this 3rd day of August, 2009.

12
13 STATE OF MONTANA
DEPARTMENT OF ENVIRONMENTAL QUALITY

14
15 By 
16 NORMAN J. MULLEN
Special Assistant Attorney General

Norman J. Mullen
Special Assistant Attorney General
Department of Environmental Quality
Legal Unit, Metcalf Building
P.O. Box 200901
Helena, Montana 59620-0901
Telephone: (406) 444-4961

Attorney for Department

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
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Disposal Inc., MISTER "M" DISPOSAL,
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MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding
money in SouthTrust Asset Management Co.
trust account # 2640000519,

Defendants.

Case No.: DV-2000-146

**AFFIDAVIT OF NORMAN J. MULLEN
IN SUPPORT OF REQUEST FOR NINTH
WRIT OF EXECUTION**

I, Norman J. Mullen, having first been duly sworn, depose and state as follows:

1. I am over the age of 18 and a resident of Lewis and Clark County.

1 12. On January 20, 2005, this Court, in response to a request from the Department, issued
2 a fourth Writ of Execution. The Missoula County Sheriff's Office served the writ on Defendant
3 Marvin Mintyala's employer, Watkins Shepard, on January 28, 2005.

4 13. On November 16, 2005, the Missoula County Sheriff's Office sent the Department its
5 return of service on the garnishment, along with an accounting and a check for \$7,648.74.

6 14. On January 12, 2006, this Court, in response to a request from the Department, issued
7 a fifth Writ of Execution. The Missoula County Sheriff's Office served the writ on Defendant
8 Marvin Mintyala's employer, Watkins Shepard, on January 24, 2006.

9 15. On May 31, 2006, the Missoula County Sheriff's Office sent the Department its return
10 of service on the garnishment, along with an accounting and a check for \$3,140.17.

11 16. On June 13, 2006, this Court, in response to a request from the Department, issued a
12 sixth Writ of Execution. The Missoula County Sheriff's Office served the writ on Watkins
13 Shepard, which had employed Marvin Mintyala, on June 23, 2006.

14 17. On June 23, 2006, the Missoula County Sheriff's Office sent the Department its return
15 of service on the sixth Writ, stating that Marvin Mintyala no longer worked for Watkins Shepard,
16 and that no wages were owed.

17 18. On July 24, 2008, this Court, in response to a request from the Department, issued a
18 seventh Writ of Execution.

19 19. The Department returned the seventh Writ unserved.

20 20. On August 11, 2008, this Court, in response to a request from the Department, issued
21 an eighth Writ of Execution. That Writ was requested and issued against debtor Marvin
22 Mintyala, Sandy Mintyala, and Mister M Disposal Inc.

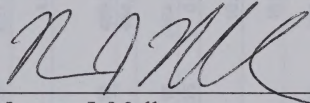
23 //

24 //

1 21. On November 21, 2008, the Fergus County Sheriff's Office sent the Department its
2 return of service on the execution, along with an accounting stating that the Department had been
3 paid \$3,000 by a debtor of Marvin Mintyala.

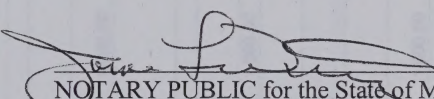
4 22. The Department filed the return of service and the Eighth Writ with the Clerk of this
5 Court for filing on December 1, 2008.

6 23. The Department has listed the payments, credits, costs, and interest concerning the
7 judgment, and calculated the amount still owed, in a spreadsheet attached to this affidavit as
8 Exhibit 1; it shows that the amount owed against the judgment is \$ 175,144.47.

9
10 
11 Norman J. Mullen

12 STATE OF MONTANA)
13 County of Lewis & Clark)

14 Subscribed and sworn to before me by Norman J. Mullen this 3rd day of August, 2009.

15 
16 NOTARY PUBLIC for the State of Montana

17 Joyce L. Wittenberg
18 Printed name of notary

19 SEAL

20 Title: Notary Public

21 Residing at Helena

22 My commission expires: May 21, 2011
23
24

DEQ v. Mintyala
Case DV-2000-146
Judgment and Payments
8/7/08

DATE	DESCRIPTION	PRINCIPAL				INTEREST				GRAND TOTAL
		FEES	PENALTY	FINANCIAL ASSURANCE	TOTAL	FEES	PENALTY	FINANCIAL ASSURANCE	RUNNING TOTAL	
9/13/2002	Judgment	12,037.26	1,000.00	305,326.00	318,363.26				0.00	318,363.26
9/19/2002	Interest 9/14-19/2002				318,363.26	19.79	1.64	501.91	523.34	318,886.60
9/19/2002	Bond forfeited- money transf'd to trust			(198,000.00)	120,363.26					120,363.26
9/18/2003	principal owed/increased interest on 9/18/03 when 1st Writ of Execution requested	12,037.26	1,000.00	107,326.00	120,363.26	1,197.13	99.45	10,673.79	12,493.71	132,856.97
1/22/2004	increase in interest when sheriff returns 1st writ 9/19/2002-1/22/04 (125 days)				120,363.26	412.23	34.25	3,675.55	16,615.74	136,979.00
1/22/2004	interest owed to date					1,629.15	135.34	14,851.25		
1/22/2004	Sheriff returns Writ- \$2,155.64 - Sheriff's fees \$83.26 = \$2,072.38	(443.23)			119,920.03	(1,629.15)			14,986.59	134,906.62
3/2/2004	principal owed/increased interest when 2nd Writ Execution Requested	11,594.03	1,000.00	107,326.00	119,920.03	127.06	10.96	1,176.18	16,300.79	
3/2/2004	amounts owed when 2d writ requested					127.06	146.30	16,027.43	16,300.79	136,220.82
7/7/2004	increase in interest 3/3/2004-7/7/2004 (127 days) when sheriff returns 2d writ				119,920.03	403.41	34.79	3,734.36	20,473.35	140,393.38
7/7/2004	interest owed to date					657.53	181.09	19,761.79		
7/7/2004	Sheriff Returns Writ- \$3,256.64 - Sheriff's fees \$78.25 = \$3,178.39	(2,520.86)			117,399.17	(657.53)			19,815.82	137,214.99
7/9/2004	principal owed/increased interest when 3rd Writ of Execution requested	9,073.17	1,000.00	107,326.00		4.97	0.55	58.81	19,880.15	137,279.32
1/12/2005	amts. owed/increased interest when sheriff returns 3d writ 7/10/2004-1/12/2005 (185 days)				117,399.17	459.87	50.68	5,439.81	25,830.51	143,229.68
1/12/2005	interest owed to date					464.84	232.32	25,260.41		
1/12/2005	Sheriff Returns Writ- \$4,055.85 less Sheriff's fees \$82.00 = \$3,973.85	(3,509.01)			113,890.16	(464.84)			25,365.67	139,255.83
1/12/2005	Balances after payment by Sheriff	5,564.16	1,000.00	107,326.00	113,890.16	0.00	232.32	25,260.41		
1/19/2005	principal owed/increased interest when 4th Writ of Execution Requested					10.67	1.92	205.83		
1/19/2005	interest owed to date when 4th Writ of Execution Requested					10.67	234.24	25,466.24		139,601.31
11/16/2005	Interest 1/20/-11/16/2005 (300 days) when sheriff returns 4th writ				113,890.16	457.33	82.19	8,821.32	34,726.51	148,616.67
11/16/2005	amounts owed when sheriff returns 4th writ	5,564.16	1,000.00	107,326.00		478.67	316.43	34,287.56		
11/16/2005	Sheriff Returns Writ- \$7,731.22 less Sheriff's fees \$82.48 = \$7,648.74	(5,564.16)	(1,000.00)		107,326.00	(478.67)	(316.43)	(289.48)	33,641.93	140,967.93
	Balances after payment by Sheriff	0.00	0.00	107,326.00	107,326.00	0.00	0.00	33,998.08	33,998.08	141,324.08
1/10/2006	interest 11/16/05-1/10/06- (56 days) when 5th writ requested					0.00	0.00	1,646.65	35,644.73	
1/10/2006	Total Judgment and Interest Owing on 1/10/06-when 5th Writ Requested									142,970.73

EXHIBIT

1

DEQ v. Mintyala
Case DV-2000-146
Judgment and Payments
8/7/08

5/31/2006	Interest 1/11/2006-5/31/2006 (140 days) when sheriff returns 5th writ			107,326.00	0.00	0.00	4,116.61	38,114.69	145,440.69
5/31/2006	amounts owed when sheriff returns 5th writ	0.00	0.00	107,326.00	0.00	0.00	39,761.34		0.00
5/31/2006	Sheriff Returns Writ- \$3,222.40 less Sheriff's fees \$82.23 = \$3,140.17	0.00	0.00	107,326.00	0.00	0.00	(3,140.17)	34,974.52	142,300.52
	Balances after payment by Sheriff	0.00	0.00	107,326.00	107,326.00	0.00	36,621.17	36,621.17	143,947.17
6/8/2006	interest 6/01/06-6/08/06- (8 days) when 6th writ requested				0.00	0.00	235.24	36,856.40	
6/8/2006	Total Judgment and Interest Owing on 6/08/06-when 6th Writ Requested								144,182.40
7/23/2008	interest owed since 6th writ requested						22,788.40		
7/23/2008	Total Judgment and Interest Owing on 7/18/08-when 7th Writ Requested interest owed since 7th writ requested			107,326.00			558.68	59,644.80	166,970.80
8/7/2008	Total Judgment and Interest Owing on 08/07/08-when 8th Writ Requested			107,326.00				60,203.48	167,529.48
10/6/2008	Interest owed when \$3,000 paid to Department						1,764.26		
	total interest and judgment due on 10/6/08			107,326.00				61,967.75	169,293.75
10/6/2008	Carlson pays Department \$3,000 under writ total owing on 10/6/08 after payment			107,326.00				58,967.75	(3,000.00) 166,293.75
8/3/2009	interest since 10/6/08						8,850.72		
8/3/2009	total judgment and interest due 7/30/09 when requesting 9th Writ							67,818.47	175,144.47

NOTES:

- No compounding of interest
- Simple interest accrues at 10% per year on the judgment
- Except for \$198,000 received into trust on 9/19/2002, which was applied 100% to financial assurance principal owing, the monies received are credited in the following order:
 - 1st to fee interest
 - 2nd to fee principal
 - 3rd to penalty interest
 - 4th to penalty principal
 - 5th to financial assurance interest
 - 6th to financial assurance principal

County Fergus
Facility & # CL 302
Closure Landfarm
Finan Assur Liner
GW Corr Meas Methane
GW Monitoring O & M
GW Reports Run - On
Inspections
Other: Litigation



Montana Department of
ENVIRONMENTAL QUALITY

MEMO

TO: Financial Services
FROM: Dona McClung, ENFD *DM*
DATE: October 10, 2008
RE: **Financial Assurance Payment**

Please release the check sent to you earlier today from Big Iron Holding in the amount of \$3,000.00 (garnished by the Fergus County Sheriff's Department – case name Mr. M Disposal) as follows:

Carol J. Millican
Account Manager
US Bank Institutional Trust & Custody
225 Water Street, 7th Floor
Jacksonville, FL 32202

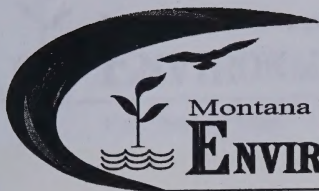
The Tax ID for US Bank is 31-0841368

Information to be included in the transmittal of these Financial Assurance funds:

- Account Title: Mister M Disposal, Inc and the Montana Department of Environmental Quality
- FA Account Number: 2695000078

If you have any questions, please contact me at extension 4010. Thank you.

cc: ENFD case file (FID #369)
Penalty payment file
Norm Mullen - Legal Unit
Ed Thamke - PCD/WUTMB *RT*
Rick Thompson/Tim Stepp - PCD/WUTMB/Solid Waste Program
Judy Hanson - PCD Division Administrator
Dave Hamer - FS Accounting Manager



Montana Department of
ENVIRONMENTAL QUALITY

MEMO

TO: Financial Services

FROM: Dona McClung, ENFD *gm*

DATE: October 10, 2008

RE: **Financial Assurance Payment – Held in Trust**

Please deposit the attached check from Big Iron Holding (case name: Mr. M Disposal) in the Department's 'Held in Trust' account. Due to recent events involving financial institutions, the bank that previously held this financial assurance account has been sold. Another DEQ staff member is working on getting the new institution's information. Once that information is available, I will send you a memo instructing you to move the funds.

If you have any questions, please contact me at extension 4010. Thank you.

cc: ENFD case file (FID #369)
Penalty payment file
Norm Mullen - Legal Unit
Ed Thamke - PCD/WUTMB
Rick Thompson/Tim Stepp - PCD/WUTMB/Solid Waste Program
Judy Hanson - PCD Division Administrator
Dave Hamer - FS Accounting Manager

BIG IRON HOLDING
208 ERIN LANE
LEWISTOWN MONTANA 59457
PH 406-538-7942

2141
93-7767/2929

10-6-08

Date

\$ 3000.00

Pay to the
Order of

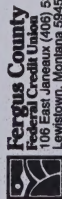
DEB

Three thousand dollars and 00/100

Dollars



Printed
Number on
Back



Fergus County
Board of Commissioners
109 East Commercial
Lewistown, Montana 59457

Josh F. Laddson

For

1:292977679:0000007922750 2141

© LIBERTY

County Fergus
Facility & # CL-302
Closure
Finan Assur
GW Corr Meas
GW Monitoring
GW Reports
Inspections
Other: Legal

Landfarm
Liner
Methane
O & M
Run - On



Montana Department of
ENVIRONMENTAL QUALITY

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

September 17, 2008

Josh Carlson
P.O. Box 164
Lewistown MT 59457

**Subpoena for October 1, 2008 at 11:00 AM in Montana Department of
Environmental Quality v. Marvin Mintyala and Sandy Mintyala, Case No. DV
2000-146.**

Dear Mr. Carlson:

As we discussed last week, you have agreed to appear under compulsion of a subpoena at an execution exemption hearing in the case referred to above. The hearing will be held at the Fergus County Courthouse at 11:00 AM on October 1, 2008.

I have enclosed the subpoena and a waiver form so that we do not have to have the Sheriff serve you. You agreed to sign the waiver form and return it to me. I have enclosed a self-addressed, stamped envelope for your use.

I apologize for causing you any inconvenience, and appreciate your cooperation. Please contact me if you have any problems with signing the waiver and returning it, or if you have any questions.

Sincerely,

Norman J. Mullen
Attorney for Department
406-444-4961 voice; 444-4386 fax
nmullen@mt.gov

RECEIVED

SEP 18 2008

Dept. of Environ. Quality
Waste & Underground
Tank Management Bureau

encls..

c. DEQ WUTMB-SW, ENF, chron

1 Norman J. Mullen
2 Special Assistant Attorney General
3 Montana Department of Environmental Quality
4 1520 E. Sixth Avenue
5 P.O. Box 200901
6 Helena, Montana 59620-0901
7 (406) 444-4961

8 Attorney for Department

9 **MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY**

10 STATE OF MONTANA ex rel.
11 DEPARTMENT OF ENVIRONMENTAL
12 QUALITY,

13 Plaintiff,

14 vs.

15 MARVIN MINTYALA and SANDY
16 MINTYALA, as individuals and as officers,
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19 MISTER "M" DISPOSAL INC.,
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MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding
money in SouthTrust Asset Management Co.
trust account # 2640000519,

Defendants.

Case No.: DV-2000-146

**SUBPOENA DUCES TECUM TO
JOSH CARLSON**

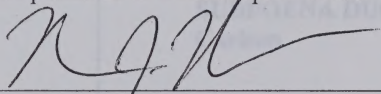
1 The State of Montana sends Greetings to **JOSH CARLSON:**

2 Pursuant to Mont.R.Civ.P. 45, you are ordered to attend and give testimony at a
3 execution exemption hearing in this matter at the Fergus County Courthouse, 712 W. Main
4 Street, Lewistown, Montana at 11:00 AM on October 1, 2008, or as soon afterward as this matter
5 may be heard, and at that time and place to produce the following documents in your possession
6 or control: all communications, transactions, evidence of title, or agreements you have had with
7 Marvin or Sandy Mintyala concerning the motor vehicles listed on Exhibit 1 attached to this
8 subpoena.

9
10 (Note- Mont.R.Civ.P. 45(c) & (d) are attached and are to be served with this subpoena).

11 Disobedience of this order will be punished as a contempt of court.

12
13 Dated September 17, 2008

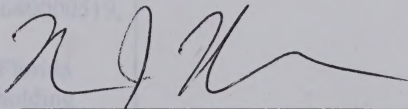

Norman J. Mullen

Attorney for Department of Environmental Quality

14
15
16 **CERTIFICATE OF SERVICE**

17 The undersigned hereby certifies that a true and correct copy of the foregoing Subpoena
18 Duces Tecum was sent on September 17, 2008, via U.S. Mail, postage pre-paid, to the
defendants, addressed as follows:

19 Marvin Mintyala
20 Sandy Mintyala
1265 Elm Street #34
Clarkston WA 99403-2374



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8 **MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY**

9 STATE OF MONTANA ex rel.
10 DEPARTMENT OF ENVIRONMENTAL
11 QUALITY,

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12 vs.

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24 holding money in SouthTrust Asset
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and SOUTHTRUST ASSET
MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding
money in SouthTrust Asset Management Co.
trust account # 2640000519,

Defendants.

Case No.: DV-2000-146

**WAIVER & ACCEPTANCE OF
SUBPOENA DUCES TECUM-
Carlson**

1 I, JOSH CARLSON, declare under penalty of perjury that I received a copy of the

2 Subpoena Duces Tecum in the above-captioned matter on this ____ day of September, 2008. I

3 accept service of the subpoena and waive the requirement of personal service.

4
5 _____
Signature of Person Signing

6 _____
Printed Name of Person Signing

7
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- 17 • original and a copied first page of a Writ of Execution and Sheriffs Report dated 8/1/08
- 18 • original and a copied first page of the Sheriff's Report, Sheriff's Return of Service, along
- 19 with Sheriff's notice of summons, return receipt, right to a hearing, and to that hearing,
- 20 along with proofs of service.
- 21 • a self-addressed stamped envelope (\$4.00).

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Montana Department of
ENVIRONMENTAL QUALITY

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

November 28, 2008

Phyllis D. Smith
Clerk of 10th Judicial District
PO Box 1074
Lewistown MT 59457-1074

Re: Return of 8th Writ of Execution in Montana Department of Environmental Quality v. Marvin Mintyala and Sandy Mintyala, DV 2000-146

Dear Ms. Smith or Clerk's staff:

I am enclosing the following documents to return and file the eighth writ of execution for the case referred to above:

Return of Old Writ:

- original and a copied first page of a Writ of Execution and Garnishment (issued 8/11/08);
- original and a copied first page of the Sheriff's Report, Sheriff's Return of Service, along with Sheriff's notices of seizure, exempt property, right to a hearing, and to third parties, along with proofs of service;
- a self-addressed, stamped envelope (SASE).

Please file the writ and the return of service and accompanying notices and proofs. Please conform and date-stamp the copied first pages of the writ and the Sheriff's Return of Service. Please send the copies back to me in the SASE.

Thank you for your assistance. Please contact me if there are any problems with my request or if you have any questions.

Sincerely,

Norman J. Mullen
Attorney for Department
406-444-4961 voice; 444-4386 fax
nmullen@mt.gov email

encls.

c. DEQ- ENF, WUTMB-SW, chron

RECEIVED

NOV 28 2008

Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau

County Leroux
Facility & # CL 302
Closure Landfarm
Finan Assur Liner
GW Corr Meas Methane
GW Monitoring O & M
GW Reports Run - On
Inspections
Other: Litigation

1 Norman J. Mullen
Special Assistant Attorney General
2 Montana Department of Environmental Quality
1520 E. Sixth Avenue
3 P.O. Box 200901
Helena, Montana 59620-0901
(406) 444-4961

4 Attorney for Department
5
6
7

8 **MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY**

9 STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
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11 Plaintiff,

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17 account # 2640000519, CUMBERLAND
CASUALTY & SURETY COMPANY, a
18 Florida Corporation, as beneficiary of trust
holding money in SouthTrust Asset
19 Management Co. trust account # 2640000519,
and SOUTHTRUST ASSET
20 MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding
21 money in SouthTrust Asset Management Co.
trust account # 2640000519,

22 Defendants.
23
24 //

Case No.: DV-2000-146

**NOTICE TO SHERIFF &
DEBTOR- RELEASE OF LEVY**

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NOV 18 2003

DEPT. OF ENVIRONMENTAL QUALITY
WASTE & UNDERGROUND TANK
MANAGEMENT DIVISION

las

WUTMB - SW

1 **TO THE FERGUS COUNTY SHERIFF & MARVIN & SANDY MINTYALA:**

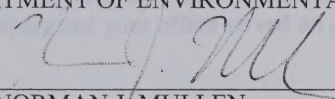
2 The Plaintiff and Creditor in this matter, State of Montana Department of Environmental
3 Quality ("Department"), hereby requests the Sheriff to release the levy imposed on property at 7
4 and 9 Boyd Creek Road on about August 20, 2008. The very low price for scrap metal and the
5 approach of winter, with potentially wet conditions that could make the property difficult to
6 access without causing damage, make the Department believe that the metal at the property
7 cannot practicably be sold and removed for scrap during the 120-day period that the current Writ
8 of Execution is in effect.

9 The address of the Mintyals and Mister M Disposal Inc. is 1265 Elm St. #34, Clarkston
10 WA 99403-2374.

11 If you have any questions or comments, please call me at (406) 444-4961. Thank you
12 very much for your assistance.

13 STATE OF MONTANA
14 DEPARTMENT OF ENVIRONMENTAL QUALITY

15 November 17, 2008
16 (date)

17 By: 
18 NORMAN J. MULLEN
19 Special Assistant Attorney General
20
21
22
23
24

County Fergus
Facility & # CL-302
Closure Landfarm
Finan Assur Liner
GW Corr Meas Methane
GW Monitoring O & M
GW Reports Run - On
Inspections Litigation
Other: _____



Montana Department of
ENVIRONMENTAL QUALITY

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

October 7, 2008

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OCT 06 2008
DEPT. OF ENVI. QUALITY
WASTE & UNDERGROUND TANK
MANAGEMENT BUREAU

Fergus County Sheriff Thomas Killham
Civil Unit
PO Box 180
Lewistown MT 59457

**Re: Release of Levy in DEQ v. Mintyala, Fergus County District Court Case DV
200-146, on Seven Motor Vehicles Listed in Notice of Seizure**

Dear Sheriff Killham:

The Montana Department of Environmental Quality (Department) has received Josh Carlson's check for \$3,000 for monies he owed to Marvin Mintyala for seven motor vehicles. Mr. Carlson has told me that your office gave him the receipt contemplated in § 25-13-502, MCA.

As a result, the Department hereby authorizes the Fergus County Sheriff to release its levy on those vehicles so that Mr. Carlson may remove them from the Mintyala's property at 9 Boyd Creek Road near Lewistown in Fergus County. The vehicles subject to the release are items 5, 6, 19-23, and 40 in Exhibit A to the Notice of Seizure that your office served on August 20, 2008.

Thank you very much for your cooperation.

Sincerely,

Norman J. Mullen
Attorney for Department
406-444-4961 voice; 444-1374 fax
nmullen@state.mt.us email

c. Josh Carlson PO Box 164 Lewistown MT 59457; DEQ ENFD; **WUTMB-SW**; chron

County Fergus
Facility & # CL-302
Closure Landfarm
Finan Assur Liner
GW Corr Meas Methane
GW Monitoring O & M
GW Reports Run - On
Inspections
Other: Litigation



**Montana Department of
ENVIRONMENTAL QUALITY**

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

October 7, 2008

Phyllis D. Smith
Clerk 10th Judicial District Court
PO Box 1074
Lewistown MT 59457-1074

RECEIVED
OCT 8 2008
DEPT. OF ENVIRO. QUALITY
WASTE & UNDERGROUND TANK
MANAGEMENT BUREAU

**Re: Department's Post-Hearing Brief in Montana Department of
Environmental Quality v. Marvin Mintyala et al, DV 2000-146**

Dear Ms. Smith or Clerk's staff:

I am enclosing, for the case referred to above, an original and a copied first page of the Department's Post-Hearing Brief in the case referred to above, along with a self-addressed, stamped envelope (SASE).

Please file the brief and bring it to the attention of the judge. Please date-stamp the copied first page and return it to me in the enclosed envelope.

Thank you for your assistance. Please contact me if there are any problems with my request or if you have any questions.

Sincerely,

Norman J. Mullen
Attorney for Department
406-444-4961 voice; 444-4386 fax
nmullen@mt.gov

encls.

c. DEQ- ENF, SW, chron

1 Norman J. Mullen
Special Assistant Attorney General
2 Montana Department of Environmental Quality
1520 E. Sixth Avenue
3 P.O. Box 200901
Helena, Montana 59620-0901
(406) 444-4961

4 Attorney for Department
5
6
7

8 **MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY**

9 STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
10 QUALITY,

11 Plaintiff,

12 vs.

13 MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
14 directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
15 MISTER "M" DISPOSAL INC.,
LEWISTOWN LANDFILL, DOMENIC
16 MASSARI, as trustee for trust holding money
in SouthTrust Asset Management Co. trust
17 account # 2640000519, CUMBERLAND
CASUALTY & SURETY COMPANY, a
18 Florida Corporation, as beneficiary of trust
holding money in SouthTrust Asset
19 Management Co. trust account # 2640000519,
and SOUTHTRUST ASSET
20 MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding
21 money in SouthTrust Asset Management Co.
trust account # 2640000519,

22 Defendants.
23
24 //

Case No.: DV-2000-146

**DEPARTMENT'S POST-
HEARING BRIEF ON
(1) NEED FOR PSC
CERTIFICATE FOR GARBAGE
HAULING &
(2) INAPPLICABILITY OF TOOL
OF TRADE OR IMPLEMENT
EXEMPTION TO MOTOR
VEHICLE**

RECEIVED

OCT 08 2008

Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau

1 The Department obtained a writ of execution in this case. The Fergus County Sheriff
2 levied on personal property located at 9 Boyd Creek Road in Fergus County, and served a notice
3 of seizure and a notice of exemption rights on the Mintyals and Mister M Disposal, Inc. Marvin
4 Mintyala filed a request for hearing on exemptions on September 2, 2008.

5 This Court held a hearing on October 1, 2008, on Defendant Marvin Mintyala's claim of
6 exemptions from execution. Sandy Mintyala testified that she and Marvin Mintyala were in the
7 business of conducting mechanical repairs at their Fergus County property during the summer
8 months. She then added that she and Marvin Mintyala had the trade of hauling demolition debris
9 for disposal. She stated that they had not engaged in that trade for 10 years, and that they had no
10 certificate from the Public Service Commission (PSC) to do so. The Department of
11 Environmental Quality (Department) argued that the Mintyals had no trade for which they
12 could claim an exemption for tools or implements of a trade under § 25-13-609(3), MCA.

13 The Court requested the Department's attorney to submit a brief on the PSC's
14 requirements concerning a permit for garbage hauling. That brief follows. In addition, the
15 Department is submitting additional authority to show that a motor vehicle can be claimed only
16 under the motor vehicle exemption in § 25-13-609(2), MCA and not as a tool or implement of a
17 trade.

18 **BRIEF**

19 **I. MINTYALAS MAY NOT HAUL GARBAGE WITHOUT A PSC CERTIFICATE**

20 The Montana Solid Waste Act, at § 75-10-204, MCA, authorizes the Department to adopt
21 rules concerning the sanitary disposal of solid waste. ARM 17.50.503 (attached here as
22 Appendix A), was adopted pursuant to that section. It defines construction and demolition waste
23 as being Group IV solid waste. Group IV solid waste may be disposed of only in a solid waste
24 landfill licensed by the Department. See §§ 75-10-212(1) and 221(1), MCA.

1 The statutes governing the regulation of motor carriers by the PSC define garbage as
2 “ashes, trash, waste, refuse, rubbish, organic or inorganic matter that is transported to a licensed
3 transfer station, licensed landfill, licensed municipal solid waste incinerator, or licensed disposal
4 well.” § 69-12-101(6), MCA.

5 That same code requires a person who hauls garbage to have a Class D permit from the
6 PSC. Please see § 69-12-301(5), MCA: “Class D motor carriers include all motor carriers
7 operating motor vehicles transporting garbage,” and § 69-12-314(1), MCA: “Class D carriers
8 shall conduct operations pursuant to a certificate of public convenience and necessity issued by
9 the commission authorizing the transportation of the commodities described in 69-12-301(5).”

10 A person who operates without a PSC certificate is subject to a penalty and injunctive
11 relief. See §§ 69-12-108 and 69-12-209, MCA.

12 So, a person in the position of the Mintyalas who wishes to haul construction and
13 demolition waste is considered to be hauling garbage. Such a person would be considered a
14 Class 5 motor carrier, and a Class 5 motor carrier needs a certificate from the PSC.

15 Because the Mintyalas do not have a necessary certificate from the PSC, they should not
16 be considered to be practicing the trade of garbage hauling, and should not be able to exempt
17 property as tools or implements for garbage hauling.

18
19 **II. THE TOOL OF TRADE OR IMPLEMENT EXEMPTION DOES NOT APPLY TO**
20 **EXEMPT A MOTOR VEHICLE FROM EXECUTION.**

21 Montana law allows an exemption up to \$2500 from execution, or in bankruptcy, for one
22 motor vehicle. § 25-13-609(2), MCA. The next subsection, (3), of that statute authorizes an
23 exemption of up to \$3,000 in aggregate for tools of the trade or implements. The only reported
24 case on Lexis to address both the motor vehicle exemption and the tool and implement

1 exemption subsections just cited, a 1989 Montana bankruptcy decision, held that a motor vehicle
2 used in a trade is eligible for the motor vehicle exemption, but not the exemption for tools or
3 implements:

4 The new statute [§ 25-13-609(2), MCA] allows a \$ 1,200.00 [now \$2,500]
5 exemption in "one motor vehicle". Accordingly, the 1966 GMAC truck and the
6 1980 IHC truck may **only** be claimed as exempt under § 25-13-609(2). Based on
7 the above analysis, the opinion in *In re Taylor*, F.2d (9th Cir. 1988) (Slip Op.
8 Nov. 9, 1988), aff'g *In re Taylor*, 73 B.R. 149 (9th Cir. BAP 1987) [omissions in
9 original], **holding a logging truck as a tool of the trade would not be proper**
10 **under the new statutory scheme**. Therefore, with regard to trucks, *Taylor* will
11 no longer be followed by this Court since they are motor vehicles under Montana
12 law.

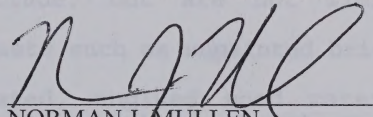
9 *In re Neutgens*, 126 B.R. 91 (Bankr. D. Mont. 1989) (emphasis added)

10 Therefore, Marvin Mintyala is not entitled to a tool or implement exemption for
11 the items listed on lines 1 and 3-7 on page 3 of the Mintyalas' Request for Hearing dated
12 September 2, 2008.

13 STATE OF MONTANA
14 DEPARTMENT OF ENVIRONMENTAL QUALITY

15 October 7, 2008
16 (date)

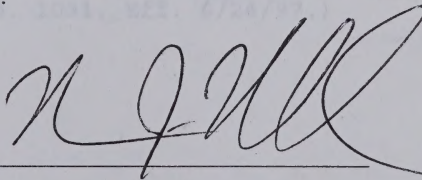
By:


16 NORMAN J. MULLEN
17 Special Assistant Attorney General

18 **CERTIFICATE OF SERVICE**

19 The undersigned hereby certifies that a true and correct copy of the foregoing
20 Department's Post-Hearing Brief was sent on October 7, 2008, via U.S. Mail, postage pre-paid,
21 to the defendants, addressed as follows:

21 Marvin Mintyala
22 Sandy Mintyala
23 1265 Elm Street #34
24 Clarkston WA 99403-2374



APPENDIX A
SOLID WASTE MANAGEMENT

17.50.503

17.50.503 WASTE GROUPS (1) Solid wastes are grouped based on physical and chemical characteristics which determine the degree of care required in handling and disposal and the potential of the wastes for causing environmental degradation or public health hazards. Solid wastes are categorized into 3 groups:

(a) Group II wastes include decomposable wastes and mixed solid wastes containing decomposable material but exclude regulated hazardous wastes. Examples include, but are not limited to, the following:

(i) municipal and household solid wastes such as garbage and putrescible organic materials, paper, cardboard, cloth, glass, metal, plastics, street sweepings, yard and garden wastes, digested sewage treatment sludges, water treatment sludges, ashes, dead animals, offal, discarded appliances, abandoned automobiles, and hospital and medical facility wastes, provided that infectious wastes have been rendered non-infectious to prevent the danger of disease; and

(ii) commercial and industrial solid wastes such as packaging materials, liquid or solid industrial process wastes which are chemically or biologically decomposable, crop residues, manure, chemical fertilizers, and emptied pesticide containers which have been triple rinsed or processed by methods approved by the department.

(b) Group III wastes include wood wastes and non-water soluble solids. These wastes are characterized by their general inert nature and low potential for adverse environmental impacts. Examples include, but are not limited to, the following:

(i) inert solid waste such as unpainted brick, dirt, rock and concrete;

(ii) clean, untreated, unglued wood materials, brush, unpainted or untreated lumber, and vehicle tires; and

(iii) industrial mineral wastes which are essentially inert and non-water soluble and do not contain hazardous waste constituents.

(c) Group IV wastes include construction and demolition wastes, and asphalt, except regulated hazardous wastes.

(2) Clean fill is not regulated under this subchapter. (History: 75-10-204, MCA; IMP, 75-10-204, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; AMD, 1993 MAR p. 1645, Eff. 10/9/93; TRANS, from DHES, 1995 MAR p. 2253; AMD, 1997 MAR p. 1031, Eff. 6/24/97.)

County Fergus
Facility & # CL-302
Closure Landfarm
Finan Assur Liner
GW Corr Meas Methane
GW Monitoring O & M
GW Reports Run - On
Inspections
Other: Litigation

G.D.

GEORGE A. DENGEL • P.O. BOX 22 • GRASS RANGE, MT 59032

9-19-08

Norm Mullen, Atty
Montana DEQ
P.O. Box 200901
Helena, MT 59620-0901

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SEP 24 2008

Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau

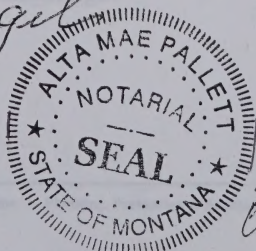
Dear Norm:

approximately 20 (twenty) years ago I, George A. Dengel, purchased a 1948 Ford Coupe Sedan, maroon in color, with a number "30" painted on the left (driver's) door from Marwin Mintzala. This vehicle is presently on the property of Mr. Mintzala and I would like to remove it as soon as is permissible.

I thank you for your attention to this matter and will await your answer.

Sincerely

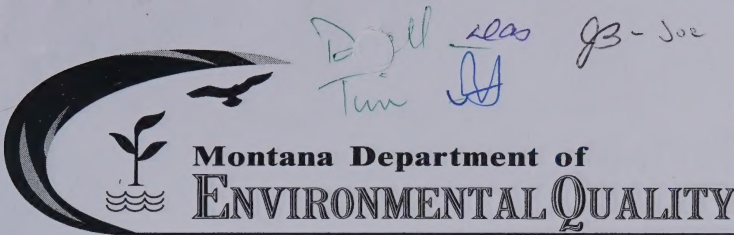
George A. Dengel



Alta Mae Pallett
Notary Public for
State of Montana, residing
in Liberton Montana.
Commission expires 6/29/2011

Re: Mintzala DV 2000-146
C: ENF, WUTMB-SW

County Fergus
Facility & # CL 302
Closure Landfarm
Finan Assur Liner
GW Corr Meas Methane
GW Monitoring O & M
GW Reports Run - On
Inspections
Other: Litigation



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SEP 30 2008

DEPT. OF ENVIRO. QUALITY
WASTE & UNDERGROUND TANK
MANAGEMENT BUREAU

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

September 29, 2008

Phyllis D. Smith
Clerk, 10th Judicial District Court
PO Box 1074
Lewistown MT 59457-1074

Also sent by fax to 406-535-6076

**Re: Subpoena to Ed Wilcox in Montana Department of Environmental Quality v.
Marvin Mintyala et al, DV 2000-146**

Dear Ms. Smith or Clerk's staff:

I am enclosing the following for the case referred to above:

- Subpoenas duces tecum issued to Ed Wilcox and Josh Carlson for October 1, 2008, hearing; and signed Admissions of Service for those subpoenas;
- Notice of Deposition and Subpoena duces tecum issued to Ed Wilcox for September 23, 2008, Deposition, and Admission of Service signed by Mr. Wilcox for that subpoena;
- Copied first pages of the subpoenas and copies of the admissions of service; and
- a self-addressed, stamped envelope (SASE).

Please file the subpoenas and admissions of service. Please conform and date-stamp the copied first pages of the subpoenas and the admissions of service, and please send the copies back to me in the enclosed envelope.

Thank you for your assistance. Please contact me if there are any problems with my request or if you have any questions.

Sincerely,

Norman J. Mullen
Attorney for Department
406-444-4961 voice; 444-4386 fax
nmullen@mt.gov

encls.

c. DEQ- ENF, SW, chron



Montana Department of
ENVIRONMENTAL QUALITY

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

September 26, 2008

John Bolin
JB Junk
2535 9th Ave NW,
Great Falls, MT 59404-5312

**Re: Release of Levy in DEQ v. Mintyala, Fergus County District Court Case DV
200-146, on Freightliner Cab and Chassis**

Dear Mr. Bolin:

You stated to Robert Smith and me on the telephone today that you own the vehicle referred to above. Marvin and Sandy Mintyala stated that JB Junk is the owner in his September 2, 2008, Request for Hearing on Exemptions. I do not find a listing for JB Junk in the Montana Secretary of State's database, but I understand that you are the principal of JB Junk.

The Montana Department of Environmental Quality accepts your statement, and hereby authorizes the Fergus County Sheriff to release its levy on that vehicle so that you may remove it from the Mintyala's property at 7 Boyd Creek Road near Lewistown in Fergus County.

You have agreed to remove the vehicle from that property by the end of October, 2008. You have indicated that you have Mr. Mintyala's permission to enter onto the property to remove it.

Thank you very much for your cooperation.

Sincerely,

Norman J. Mullen
Attorney for Department
406-444-4961 voice; 444-1374 fax
nmullen@state.mt.us email

c. Fergus County Sheriff, DEQ ENFD, **WUTMB-SW**

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SEP 29 2008

Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau



Montana Department of
ENVIRONMENTAL QUALITY

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

September 26, 2008

George Dengel
PO Box 22
Grass Range MT 59032

**Re: Release of Levy in DEQ v. Mintyala, Fergus County District Court Case DV
200-146, on 1948 Maroon Ford Coupe, with Painted "30" on Driver's Door**

Dear Mr. Dengel:

I received your notarized letter dated September 19, 2008, in which you stated that you own the car referred to above. Marvin and Sandy Mintyala stated that you are the owner in his September 2, 2008, Request for Hearing on Exemptions.

The Montana Department of Environmental Quality accepts your statement, and hereby authorizes the Fergus County Sheriff to release its levy on that vehicle so that you may remove it from the Mintyala's property at 7 Boyd Creek Road near Lewistown in Fergus County.

You have agreed to remove the vehicle from that property by the end of October, 2008. You have indicated that you have Mr. Mintyala's permission to enter onto the property to remove it.

Thank you very much for your cooperation.

Sincerely,

Norman J. Mullen
Attorney for Department
406-444-4961 voice; 444-1374 fax
nmullen@state.mt.us email

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SEP 29 2008

Dept. of L
Waste & L
Tank Management Bureau

c. Fergus County Sheriff, DEQ ENFD, **WUTMB-SW**

1 Norman J. Mullen
Special Assistant Attorney General
2 Montana Department of Environmental Quality
1520 E. Sixth Avenue
3 P.O. Box 200901
Helena, Montana 59620-0901
(406) 444-4961

4 Attorney for Department

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SEP 29 2008

Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau

8 **MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY**

9 STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
10 QUALITY,

11 Plaintiff,

12 vs.

Case No.: DV-2000-146

**PRAECIPE TO SHERIFF-
8th Execution-
Carlson Garnishment**

13 MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
14 directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
15 MISTER "M" DISPOSAL INC.,
LEWISTOWN LANDFILL, DOMENIC
16 MASSARI, as trustee for trust holding money
in SouthTrust Asset Management Co. trust
17 account # 2640000519, CUMBERLAND
CASUALTY & SURETY COMPANY, a
18 Florida Corporation, as beneficiary of trust
holding money in SouthTrust Asset
19 Management Co. trust account # 2640000519,
and SOUTHTRUST ASSET
20 MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding
21 money in SouthTrust Asset Management Co.
trust account # 2640000519,

22 Defendants.

RECEIVED

SEP 29 2008

Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau

C: WUTMB-SW

1 **TO THE SHERIFF OF FERGUS COUNTY, MONTANA:**

2 I, Norman J. Mullen, represent the State of Montana's Department of Environmental
3 Quality ("Department") in this matter. You have previously received an original and five copies
4 of an 8th Writ of Execution issued by the Clerk of the Fergus County Court. I am now enclosing
5 two additional copies of the writ, along with a Notice of Seizure and a Notice of Exemption
6 Rights, a self-addressed stamped envelope, and a stamped envelope addressed to Marvin
7 Mintyala, Sandy Mintyala, and Mister M Disposal Inc.

8 I am informed by Josh Carlson, home address is 716 Truck Bypass, PO Box 164
9 Lewistown 59457, ph. 1 406-538-9174, that he owes Marvin Mintyala (Marvin) \$3,000 total for
10 six Chrysler Imperials and one Chrysler Newport that Marvin has sold to him but for which he
11 has not yet paid Marvin. These vehicles are among the personal property located at 7 Boyd
12 Creek Road near Lewistown that has been levied upon by your office under the 8th Writ of
13 Execution.

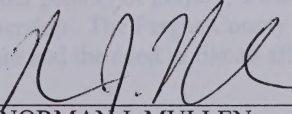
14 I request that you garnish Mr. Carlson, under the 8th Writ, for the debt he owes to Marvin.
15 Please serve Mr. Carlson and defendants Marvin Mintyala, Sandy Mintyala, and Mister M
16 Disposal Inc. with the Writ of Execution, Notice of Seizure, and Notice of Exemption Rights as
17 necessary. The address of the Mintyalas and Mister M Disposal Inc. is 1265 Elm St. #34,
18 Clarkston WA 99403-2374.

19 If you have any questions or comments, please call me at (406) 444-4961. Thank you
20 very much for your assistance.

21 STATE OF MONTANA
22 DEPARTMENT OF ENVIRONMENTAL QUALITY

23 September 26, 2008
24 (date)

By:


NORMAN J. MULLEN
Special Assistant Attorney General



**Montana Department of
ENVIRONMENTAL QUALITY**

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

September 24, 2008

Tina M Mintyala-Stricker
3210 Lindell Rd NE
Olympia WA 98506

**Re: Possible Agreement Concerning Sheriff's Sale of Heavy Equipment at
7 Boyd Creek Road and Distribution of Proceeds**

Dear Ms. Mintyala-Stricker:

I represent the Montana Department of Environmental Quality (MDEQ) on solid waste issues. I have tried to reach you by telephone at your home and work, and understand you have been traveling for business, so I am writing.

I am the lawyer for MDEQ in a landfill enforcement case, Fergus County District Court Case No. DV 200-146, in which MDEQ obtained a judgment for about \$167,000 for post-closure care funds against Marvin and Sandy Mintyala and Mister M Disposal, Inc. The Fergus County District Court has issued a writ of execution on that judgment and, based on that writ, the Fergus County Sheriff has seized personal property, including heavy equipment and motor vehicles, at the Mintyalas' property at 7 Boyd Creek Road east of Lewistown in Fergus County. The Sheriff sent a notice to the Mintyalas, and Marvin Mintyala responded by filing a Request for Hearing on Claimed Exemptions, in which he stated that many pieces of heavy equipment that had been seized were owned by "TM Stricker". This means he has legally disclaimed any interest in those items.

Ownership by a third person is not a valid claim of exemption, and the MDEQ will be opposing that claim at the hearing set for 11 AM on October 1, 2008, in Lewistown, Montana. Marvin Mintyala offered to sell the heavy equipment to a scrap metal salvager in early August of this year, and asked the salvager to pre-date the sales receipt, leading MDEQ to believe that Marvin Mintyala is the true owner of that equipment.

The law does set up a process for a third person to claim an interest in property seized under an execution sale. It states that the third person may file an affidavit with the Sheriff. Please see Sections 25-13-503 and 27-18-602, Mont. Code Ann. (MCA). Those sections require a claimant to provide, under penalty of perjury, a description of the items claimed and the basis of the claim of ownership. The Fergus County Sheriff is likely to notify you, in the near future, of the seizure and the need to file an affidavit.

Das
RECEIVED

SEP 26 2008

WVTM.B-gw
Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau

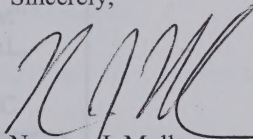
Tina Mintyala-Stricker
Re: Stipulation on Sheriff's Sale
September 24, 2008
Page 2

If you file an affidavit to claim an interest in those pieces of equipment, and MDEQ disagrees, it could file a lawsuit to determine ownership of the equipment. However, this could take some time and could require a significant investment in resources by both you and MDEQ. Metal prices have dropped by two-thirds in the past several months, so the sale price on these items will be much lower than it would have been a few months ago.

Also, one of MDEQ's goals is to remove the pieces of heavy equipment and other property from the land so that it may conduct necessary repair and maintenance of a pond and of the soil and vegetative cover at the landfill. This is called post-closure care, and is authorized by Administrative Rules of Montana (ARM) 17.50.531. If you would agree to the following with MDEQ in a stipulation to be entered as a court order, the Fergus County Sheriff could sell the items and hold the money for up to 30 days while you and MDEQ decide who is entitled to it. After that, the Department could file a lawsuit to have it deposited with the Fergus County District Court to be held until the Court decides. This will get the items of heavy equipment sold and out of the way, which should be desirable to both you and my client, while leaving the question of ownership for the parties or the court to decide.

Please let me know if this is agreeable to you. I have enclosed a stipulation to that effect. If it is agreeable, please sign the stipulation and return it to me in the envelope I have provided.

Sincerely,



Norman J. Mullen
Attorney for Department
406-444-4961 voice; 444-4386 fax
nmullen@mt.gov

encls.

c. DEQ ENF, WUTMB-SW, chron

1 Norman J. Mullen
Special Assistant Attorney General
2 Montana Department of Environmental Quality
1520 E. Sixth Avenue
P.O. Box 200901
3 Helena, Montana 59620-0901
(406) 444-4961
4 Attorney for Department

5 Tina Mintyala-Stricker
3210 Lindell Rd NE
6 Olympia, WA 98506
(360) 956-1162
7 Third Person Claimant of Seized Property

8 **MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY**

9 STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
10 QUALITY,

11 Plaintiff,

12 vs.

13 MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
14 directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
15 MISTER "M" DISPOSAL INC.,
LEWISTOWN LANDFILL, DOMENIC
16 MASSARI, as trustee for trust holding money
in SouthTrust Asset Management Co. trust
17 account # 2640000519, CUMBERLAND
CASUALTY & SURETY COMPANY, a
18 Florida Corporation, as beneficiary of trust
holding money in SouthTrust Asset
19 Management Co. trust account # 2640000519,
and SOUTHRUST ASSET
20 MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding
21 money in SouthTrust Asset Management Co.
trust account # 2640000519,

22 Defendants.
23
24 //

Case No.: DV-2000-146

**STIPULATION BETWEEN
TM STRICKER & DEPARTMENT
OF ENVIRONMENTAL QUALITY**

1 Plaintiff Montana Department of Environmental Quality and Tina Mintyala-Stricker
2 (Mintyala-Sticker), who is listed by Defendant Marvin Mintyala in his Request for Hearing filed
3 with this Court on September 2, 2008, as owning certain personal property located on his land at
4 7 Boyd Creek Road east of Lewistown in Fergus County, Montana, hereby stipulate as follows:

5 1. If Mintyala-Stricker files an affidavit pursuant to Sections 25-13-503 and 27-18-602,
6 Mont. Code Ann. within 10 days after being served with a Notice by the Sheriff, she and the
7 Department (the Parties) agree that the personal property listed by Defendant Marvin Mintyala in
8 his Request for Hearing as owned by her may be sold at Sheriff's sale, and that the proceeds
9 from that sale must be held by the Sheriff until the Department and Mintyala-Stricker submit a
10 signed, written agreement to the Sheriff directing the distribution of the proceeds.

11 2. If the Parties do not reach agreement within 30 days after the sale, the Department
12 may file an action in Fergus County District Court to determine the distribution of the proceeds.
13 Upon that filing the Sheriff may then deposit the proceeds with the Court, the Sheriff will have
14 no further duties to the Parties regarding the proceeds.

15 3. Both Parties agree to personal jurisdiction, subject matter jurisdiction, and venue in
16 the Fergus County District Court for any action filed pursuant to the preceding paragraph.

17 4. The Parties request this Court to enter an Order adopting this Stipulation.

18
19 _____
20 (date)

Norman J. Mullen
Attorney for Department of Environmental Quality

21
22 _____
23 (date)

Tina Mintyala-Stricker

CLERK OF THE
DISTRICT COURT
PHYLLIS D. SMITH

2008 SEP 3 PM 1 35

FILED
BY *Gayle D. May*
DEPUTY

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

No. DV-00-146

**STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,**

Plaintiff,

vs.

**MARVIN MINTYALA and SANDY
MINTYALA**, as individuals and as officers,
Directors, and shareholders of Mister "M"
Disposal Inc., **MISTER "M" DISPOSAL,**
MISTER "M" DISPOSAL INC.,
**LEWISTOWN LANDFILL, DOMENIC
MASSARI**, as trustee for trust holding money)
in SouthTrust Asset Management Co. trust)
account # 2640000519, **CUMBERLAND**)
CASUALTY & SURETY COMPANY, a)
Florida Corporation, as beneficiary of trust)
holding money in SouthTrust Asset)
Management Co. trust account # 2640000519,)
and **SOUTHTRUST ASSET**)
MANAGEMENT COMPANY, a Florida)
Corporation, as custodian of trust holding)
money in SouthTrust Asset Management Co.)
trust account # 2640000519,)

Defendants.)

Judge E. Wayne Phillips

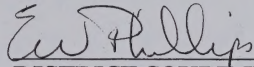
ORDER SETTING HEARING

On September 2, 2008, Defendants filed a Request For Hearing On Claimed
Exemptions relating to a Writ of Execution issued by the Court. For good cause
appearing;

1 **IT IS HEREBY ORDERED** that a hearing on Defendants' request shall be
2 held **October 1, 2008 at 11:00 A.M.** in the courtroom of the Fergus County
3 Courthouse, Lewistown, Montana.

4 The Clerk of Court is directed to file this Order Setting Hearing and provide copies to
5 counsel of record and the parties appearing *pro se*.

6 DATED this 3 day of September 2008.

7
8 

9 **DISTRICT COURT JUDGE**

10 Hon. E. Wayne Phillips

11 P. O. Box 1124

12 Lewistown, Montana 59457

13 Telephone: (406) 535-8028

14 Facsimile: (406) 535-6076

15 c: Norman J. Mullen, Esq.

16 c: Marvin Mintyala and Sandy Mintyala, *pro se*

DV-00-146.a

17 **REQUEST FOR HEARING ON**
18 **CLAIMED EXEMPTIONS**

19 Defendant represents and petitions the Court as follows:

20 1. A Judgment was entered against the above Defendant(s) in the above entitled
21 Court. Upon application to the Court a Writ of Execution was issued. The Sheriff or
22 Levying Officer levied the execution upon property of the Defendant.

23 2. The Defendant believes the Sheriff or Levying Officer has levied against exempt
24 property. The defendant claims an exemption in the following property as listed in

25 The Notice of Seizure.

26 Describe the property claimed exempt, and type of exemption:

See attached listing for details.

DI-2000-46

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

CLERK OF THE
DISTRICT COURT
PHYLLIS D. SMITH

2008 SEP 2 PM 3 22

FILED

BY *Phyllis D. Smith*
Cause No. DV-2000-145
DEPUTY Clerk

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff

Vs.

Marvin Mintyala and Sandy Mintyala et al

Defendants

REQUEST FOR HEARING ON
CLAIMED EXEMPTIONS

Defendant represents and petitions the Court as follows:

1. A Judgment was entered against the above Defendant(s) in the above-entitled Court. Upon application to the Court a Writ of Execution was issued. The Sheriff or Levying Officer levied the execution upon property of the Defendant.
2. The Defendant believes the Sheriff or Levying Officer has levied against exempt property. The defendant claims an exemption in the following property as listed in The Notice of Seizure.

Describe the property claimed exempt, and type of exemption:

See attached listing for details.

TO SHERIFF OF FERGIS COUNTY
CLERK OF COURT MONTANA TENTH JUDICIAL DISTRICT COURT, FERGIS COUNTY
RE: JESSE
AUGUST 23, 2008

PAGE 1 OF 5

3. Defendant is entitled to a prompt hearing on claimed exemptions. Defendant requests a hearing before the Court on the claimed exemption. Defendant further requests that said hearing occur after September 26, 2008 due to previous obligations that are time specific.

Dated this 2 day of Sept, 2008.

Marvin Mintyala

Sandy Mintyala

1265 EIM St. #34

Clarkston, WA 99403 - 2374

(406) 431- 9746

TO SHERIFF OF FERGUS COUNTY
CLERK OF COURT, MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY
RE: SEIZURE DV-2000146
AUGUST 29, 2008

PAGE 1 OF 5

LEGEND

** PROPERTY OF T M STRICKER
*** PROPERTY OF JOSH CARLSON
**** EXEMPT TOOLS OF TRADE
***** EXEMPT PERSONAL VEHICLE
^^^^ PROPERTY OF STEVE MINTYALA
^^^ PROPERTY OF PENNY MINTYALA
^^ PROPERTY OF OTHERS SEE ITEM

PROPERTY OF T M STRICKER

- **Picture 66 ---CAT D9 18A SER#2058 USED PARTS
- **Picture 62--- CAT REPAIR PARTS
- **Picture 65 ---CAT D9 34A SERIAL NUMBER UNKNOWN, ANGLE DOZER ENGINE APART
- **Picture 2 ---CASE 1150 LOADER WITH BUCKET SER#7110335 BUCKET & ARMS SER # 102660
- **Picture 60 ---4 IN 1 BUCKET DROT SER# AL20A132
- **Picture 47 ---CATERPILLAR REPAIR PARTS BY FUEL SHED
- **Picture 59 & 61 ---CAT 70 PULL SCRAPER SER# SW6150
- **Picture 51, 53 & 57 ---CAT DOZER BLADE, TRACKS AND CANOPY FOR D9 CAT
- **Picture 54 ---TRACKS FOR CASE 1150 LOADER
- **Picture 52 ---CAT PARTS NEAR FUEL SHED TOP OF HILL INCLUDING TRACKS, CANOPY & OTHER PARTS
- **Picture 49 ---D2 CAT WITH DOZER
- **Picture 44 ---CASE DH5 AND (BACK HOE D100 SER # 1122946)
- **Picture 23 ---CAT REPAIR PARTS
- **Picture 40 ---OLD FORD COCA COLA TRUCK FULL OF CATERPILLAR SPARE PARTS USED FOR STORAGE

TO SHERIFF OF FERGUS COUNTY
CLERK OF COURT, MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY
RE: SEIZURE DV-2000146

**Picture 13 & 39 ---CANOPY FOR CATERPILLER D9 PLUS OTHER PARTS

**Picture 41 ---D9 18A SER# 531 WITH HINGED RIPPER

**Picture 35, 36 & 37 --- CAT PARTS FOR SER# 531

**Picture 38 ---U DOZER FOR CAT SER # 531

**Picture 29 ---CAT D9 18A WITH DOZER AND HINGED RIPPER SER# 1694

**Picture 32 ---CAT TRANSMISSION IN FRONT OF JEEP

**Picture 31 ---1953 CHEVROLET PANEL SER #H53J003841

**Picture 30 ---CAT MODEL DW10 SELF PROPELLED SCRAPER

**Picture 22 ---CAT ENGINE REPAIR PARTS

**Picture 19 ---CAT HEADS 3

**Picture 21 ---CAT RADIATOR

**Picture 3 ---CAT CANOPY BEHIND OFFICE

**Picture 10 ---FINAL DRIVE WITH SPROCKET AND TURN BRAKE IN FRONT OF POLE BARN

**Picture 7 ---CAT REPAIR PARTS

**Picture 4 ---CAT D9 18A WITH SCRAPER CAT SER# 18A1836

**Picture 6 ---INTERNATIONAL TD25 CRAWLER TRACTOR WITH DOZER AND HINGED RIPPER
SER# BP2040

TOOLS OF TRADE MARVIN MINTYALA

****Picture 33 & 28 1966 DODGE WRECKER SER # 1481577548 LICENSE 8T2081A ---TOOL OF TRADE

****Picture 24 ---LINCOLN PORTABLE ARC WELDER 300 AMP SER# A612716 --- TOOL OF TRADE

****Picture 25 --- CHEVROLET WINCH 1 1/2 TON WINCH TRUCK --- TOOL OF TRADE

****Picture 67 ---1974 DODGE 300 UTILITY TRUCK --- TOOL OF TRADE

****Picture -- 12 -ENDGATES GOOSENECK TRAILERS --- TOOL OF TRADE

****Picture 16 ---1975 FET GOOSENECK TRAILER SER# 187312640 ---TOOL OF TRADE

****Picture 15 SCHUSTER GOOSE NECK TRAILER LICENSE # 8TR2808A --- TOOL OF TRADE

****Picture 42 ---OLD LATHE TOOL OF TRADE

PERSONAL VEHICLE MARVIN MINTYALA

*****Picture 11 ---1976 CIRCLE J COMBINATION STOCK TRAILER SER # 6418 LICENSE 8TR 310A
Exempt as one personal vehicle

PROPERTY OF OTHERS SEE ITEM

^^Picture 9 --- OLD CAR BODY WITH #30 SPRAYED ON DRIVER DOOR---PROPERTY OF GEORGE DENGEL

^^Picture 27 ---ALLIS CHALMERS HD7 CRAWLER TRACTOR WITH DOZER PROPERTY OF NORMA IRELAND

Picture 1 --- BUICK CAR SER # 1G4AB69XXDW487790 --PROPERTY OF PENNY MINTYALA

^^Picture 20 ---FREIGHTLINER CAB AND CHASSIS BELONGS TO JB JUNK, GREAT FALLS MT

^^^Picture 5 ---1981 DODGE 4X4 ¾ TON PICKUP SER# 1B7KW25T9BS184755 --- PROPERTY OF STEVE MINTYALA

^^^

Picture 34 ---CHEVROLET PICKUP 1968 SER# KE248J119593 PROPERTY OF STEVE MINTYALA

^^^Picture 18 40 VAN TRAILER ID#4471 ON FRONT PANEL SER# 6H12681-102 PROPERTY OF STEVE MINTYALA

^^^Picture 14 ---1967 INTERNATIONAL TRACTOR YELLOW & WHITE SER # 17073 PROPERTY OF STEVE MINTYALA

***Picture 56 --- CHRYSLER BODY PROPERTY JOSH CARLSON TO BE REMOVED WITHIN 120 DAYS OF FINISH OF CRUSHING AT WRECKING YARD

***Picture 58 ---1971 CHRYSLER IMPERIAL PALE BLUE SER#M43T3C134012 PROPERTY JOSH CARLSON TO BE REMOVED WITHIN 120 DAYS OF FINISH OF CRUSHING AT WRECKING YARD

***Picture 68 --- CHRYSLER 300 SEDAN SER# C453151681 PROPERTY JOSH CARLSON TO BE REMOVED WITHIN 120 DAYS OF FINISH OF CRUSHING AT WRECKING YARD

***Picture 55 ---1972 CHRYSLER IMPERIAL WHITE SER # YM43T2C299714 PROPERTY JOSH CARLSON TO BE REMOVED WITHIN 120 DAYS OF FINISH OF CRUSHING AT WRECKING YARD

***Picture 46 ---1974 CHRYSLER IMPERIAL GREEN SER # YM43T4C17361 PROPERTY JOSH CARLSON TO BE REMOVED WITHIN 120 DAYS OF FINISH OF CRUSHING AT WRECKING YARD

***Picture 46 ---1975 CHRYSLER IMPERIAL SILVER SER # YM43T5C132787 PROPERTY JOSH CARLSON TO BE REMOVED WITHIN 120 DAYS OF FINISH OF CRUSHING AT WRECKING YARD

***Picture 43 ---1974 CHRYSLER IMPERIAL RUST SER # YM43T4C162986 PROPERTY JOSH CARLSON TO BE REMOVED WITHIN 120 DAYS OF FINISH OF CRUSHING AT WRECKING YARD

TO SHERIFF OF FERGUS COUNTY
CLERK OF COURT, MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY
RE: SEIZURE DV-2000146

PAGE 5 OF 5

Pictures will be provided upon request to properly identify these items.

Marion & Mintyala
Sandy Mintyala

DATED AUGUST 29, 2008

Sept 2/08

RECEIVED

AUG 29 2008

Dept. of Energy, Quality
Energy & Undersecretary
Energy Management Bureau

I am to draft the letter we talked about last week, which is the letter of concern we have about the DMQ request for work. I will prepare that letter as soon as possible. In the mean time, Mr. Muller is prepared that seizure take place.

I do not think that any of the issues we discussed would prevent a seizure at this time. I believe that all of our concerns can be adequately addressed. I realize that some of the vehicles are not in the name of Mister M or Mrs. M or Sandy Mintyala. I believe it would be ok to include them in your seizure, as there is reason to believe that they may be the owners. However, when the time comes to sell the property, unless there is a release provided, I may be hesitant to advise you to make them a part of your sale.

In any case, I recommend seizure take place as soon as you can accomplish it.

Sincerely,

THOMAS P. MEISSNER
Fergus County Attorney

cc: Norm Mallon

C. ENT, WVTMB-SW 8/20/08 N/A

Closed

County

FERGUS

#302

Facility & #

MISER M

Closure

Landfarm

Finan Assur

Liner

GW Corr Meas

Methane

GW Monitoring

O & M

GW Reports

Run-on

Inspections

Other:

legal

Thomas P. Meissner
Fergus County Attorney

Monte J. Boettger
Deputy County Attorney

Jean A. Adams
Deputy County Attorney
HR Director



Fergus County

712 W. Main • Lewistown, MT 59457
Ph: 406-535-8127 • Fax: 406-535-2022

Sandra Thompson
Victim/Witness Coordinator

Patricia E. Fry
Legal Assistant
Office Manager

Kristin Myhre
Legal Assistant
Check Collections

August 19, 2008

Deputy Peggy Sandman
Fergus County Sheriff's Office
121 8th Avenue South
Lewistown, MT 59457

VIA FACSIMILE

RE: DEQ-Mintyala; Execution of Judgment

Dear Peggy:

I have not yet had time to draft the letter we talked about last week, which will address the issues or concerns we have about the DEQ request for seizure. I will prepare that letter as soon as possible. In the mean time, Mr. Mullen requested that seizure take place.

I do not think that any of the issues we discussed would prevent a seizure at this time. I believe that all of our concerns can be adequately addressed. I realize that some of the vehicles are not in the name of Mister M or Marvin or Sandy Mintyala. I believe it would be ok to include them in your seizure, as there is reason to believe that they may be the owners. However, when the time comes to sell the property, unless there is a release provided, I may be hesitant to advise you to make them a part of your sale.

In any case, I recommend seizure take place as soon as you can accomplish it.

Sincerely,

THOMAS P. MEISSNER
Fergus County Attorney

ack
RECEIVED

AUG 20 2008

Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau

xc Norm Mullen

C: ENF, WVTMB-SW 8/20/08 N/M

Fergus County
112 W. Main • Lewistown, MT 59031
Tel: 406-532-8137 • Fax: 406-532-3023

County Fergus
Facility # CL-302
Closure
Finan Assur
GW Con Meas
GW Monitoring
GW Reports
Inspections
Other Litigation

RECEIVED

AUG 8 0 2008

Dept. of Enviro Quality
Waste & Underground
Tank Management Bureau

THOMAS T. WEISSNER
Fergus County Attorney

AUG 12 2008

PO Box 200901

COPY

1 Norm Mullen
Special Assistant Attorney General
2 Montana Department of Environmental Quality
1520 E. Sixth Avenue
3 P.O. Box 200901
Helena, Montana 59620-0901
4 (406) 444-4961

5 Attorney for Department

7 **MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY**

8 STATE OF MONTANA ex rel. DEPARTMENT
OF ENVIRONMENTAL QUALITY,

Case No.: DV-2000-146

9 Plaintiff,

**EIGHTH WRIT OF
EXECUTION**

10 vs.

11 MARVIN MINTYALA and SANDY
12 MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
13 Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC., LEWISTOWN
14 LANDFILL, DOMENIC MASSARI, as trustee
for trust holding money in SouthTrust Asset
15 Management Co. trust account # 2640000519,
CUMBERLAND CASUALTY & SURETY
16 COMPANY, a Florida Corporation, as
beneficiary of trust holding money in SouthTrust
17 Asset Management Co. trust account #
2640000519, and SOUTHTRUST ASSET
18 MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding money
19 in SouthTrust Asset Management Co. trust
account # 2640000519,

20 Defendants.

87
RECEIVED

AUG 12 2008

Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau

22 //
23 //
24 //

C:ENF, WUTMB-SW 8/12/08 mm

1 **FROM THE STATE OF MONTANA TO THE SHERIFF OF FERGUS COUNTY OR**
2 **LEVYING OFFICER:**

3 WHEREAS, on September 13, 2002, the State of Montana ex rel. Department of
4 Environmental Quality obtained a judgment in the Montana Tenth Judicial District Court, Fergus
5 County, against Marvin Mintyala, Sandy Mintyala, and Mister "M" Disposal Inc., as follows:

6 Original or Balance Due on Judgment in the amount of: \$ 318,363.26

7 Amount of judgment for which execution issued on 9/18/03 131,556.10

8 Amount of judgment for which execution issued on 3/4/04 134,942.88

9 Amount of judgment for which execution issued on 7/12/04 136,382.53

10 Amount of judgment for which execution issued on 1/20/05 139,405.68

11 Amount of judgment for which execution issued on 1/12/06 142,825.66

12 Amount of judgment for which execution issued on 6/13/06 144,182.40

13 Amount of judgment for which execution issued on 7/24/08 166,970.80

14 **Total sum due and owing on August 7, 2008 after credits and costs:** \$167,529.48

15 The basis for these amounts is found in the affidavit of Norman J. Mullen, which is attached to
16 this Writ.

17 NOW, you, the sheriff or levying officer, are hereby required to make this sum due on the
18 judgment or damages, with interest, costs, and accruing costs, to satisfy the judgment out of the
19 PERSONAL PROPERTY and WAGES of the debtor, Marvin Mintyala, Sandy Mintyala, and
20 Mister M Disposal Inc., NOT EXEMPT FROM EXECUTION on the day on which the judgment
21 was docketed in Fergus County, or at any time hereafter, and return this writ not less than 10
22 days nor more than 120 days after the date of issuance subscribed thereon, with a record of your
23 actions endorsed thereon.

24 Given under my hand this 11th day of August, 2008.

CLERK OF DISTRICT COURT

Phyllis D. Smith

By:

1 Norman J. Mullen
2 Special Assistant Attorney General
3 Department of Environmental Quality
4 Legal Unit, Metcalf Building
5 P.O. Box 200901
6 Helena, Montana 59620-0901
7 Telephone: (406) 444-4961

8 Attorney for Plaintiff

2008 JUL 30 A 10:16

BY DAINTIERE
DEPUTY

RECEIVED

AUG 01 2008

Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau

9 **MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY**

10 IN THE MATTER OF

11 MARVIN MINTYALA, SANDY
12 MINTYALA, AND MISTER M DISPOSAL
13 INC., AND PROPERTY LOCATED AT 7
14 BOYD CREEK RD, PT E2SW4, PT W2SE4,
15 AS SHOWN ON COS 439, SEC. 8, T. 15N,
16 R. 19E, FERGUS COUNTY

SW 208-16

**WARRANT FOR ENTRY AND
INVESTIGATION PURSUANT TO THE
MONTANA SOLID WASTE
MANAGEMENT ACT, TITLE 75,
CHAPTER 10, PART 2, MCA**

17 To Robert Smith and Chad Anderson of the State of Montana Department of
18 Environmental Quality, any other duly authorized inspector of the State of Montana Department
19 of Environmental Quality, and any peace officer of the State of Montana:

20 This Court has considered the Application of the State of Montana Department of
21 Environmental Quality (Department) for a warrant, filed pursuant to the Montana Solid Waste
22 Management Act, Title 75, Chapter 10, Part 2, MCA (MSWMA), to enter and inspect and
23 inventory property owned by., at 7 Boyd Creek Rd, described as PT E2SW4, PT W2SE4, AS
24 SHOWN ON COS 439, SEC. 8, T. 15N, R. 19E, in Fergus County, Montana (the Property).

WUTMB-SW

1 The Department has demonstrated the requisite probable cause for an inspection and
2 inventory of the Property under the MSWMA and this Court is satisfied that entry on and
3 inspection of the Property and inspection of and inventorying of certain items of personal
4 property is authorized by law.

5 IT IS HEREBY ORDERED THAT upon service of this Warrant upon Marvin Mintyala,
6 Sandy Mintyala, a representative of Mister M Disposal Inc., or if one of them is not available, by
7 posting it conspicuously at the Property, Mr. Smith, Mr. Anderson, any other inspectors
8 designated by the Department, and any peace officer of the State of Montana, are authorized to:

- 9 1. enter on and into, move about and remain on or about the Property and conduct an
10 inspection of all places where solid wastes, motor vehicles, heavy equipment, and
11 scrap metal are or may be in the path needed for vehicles or equipment to conduct
12 post-closure care at the landfill, and to conduct an inventory of items on the Property
13 that may have value, including value as scrap metal that may be sold to partially
14 satisfy the Department's judgment against the Mintyalas or Mister M Disposal Inc.;
- 15 2. take photographs, including videotape, to document the inspection and inventorying
16 activity or observations;
- 17 3. record license plate and vehicle identification numbers and other identifying
18 characteristics of motor vehicles and equipment located on the Property; and
- 19 4. make maps, take notes, and make global positioning system readings and other
20 readings and measurements as necessary to indicate the location and identity of any
21 solid wastes, scrap, motor vehicles, or heavy equipment on a map.

22 IT IS FURTHER ORDERED that a copy of this Warrant shall be left at the premises at
23 the time of investigation.

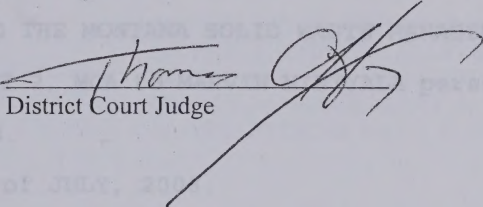
24 //

1 IT IS FURTHER ORDERED that the Fergus County Sheriff's Office and its peace
2 officers are hereby authorized and directed to assist employees of the Department in such manner
3 as may be reasonable and necessary to properly execute this Warrant and all the provisions
4 contained herein.

5 IT IS FURTHER ORDERED that the duration of the entry, investigation and activity
6 authorized by this Warrant shall be of such reasonable length to enable the Department to
7 satisfactorily complete the above-described activities, but in no event longer than thirty (30) days
8 from the date hereof.

9 Dated this 2nd day of July, 2008.

10 BY THE COURT:

11
12 
13 District Court Judge

STATE OF MONTANA)
: General
COUNTY OF FERGUS)

OFFICE OF THE SHERIFF

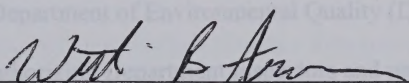
Cause No. ***

I hereby certify that I received the attached copy of the WARRANT FOR ENTRY AND INVESTIGATION PURSUANT TO THE MONTANA SOLID WASTE MANAGEMENT ACT, TITLE 75, CHAPTER 10, PART 2, MCA on the 23RD day of JULY, 2008.

That I personally served the attached copy of the WARRANT FOR ENTRY AND INVESTIGATION PURSUANT TO THE MONTANA SOLID WASTE MANAGEMENT ACT, TITLE 75, CHAPTER 10, PART 2, MCA on the 23RD day of JULY, 2008, at 2:05 P.M. upon MARVIN MINTYALA the person named therein, by delivering a copy of said WARRANT FOR ENTRY AND INVESTIGATION PURSUANT TO THE MONTANA SOLID WASTE MANAGEMENT ACT, TITLE 75, CHAPTER 10, PART 2, MCA to MARVIN MINTYALA personally in the said County of Fergus.

DATED this 23RD day of JULY, 2008.

THOMAS L. KILLHAM, SHERIFF


WILLIAM B. ARMOUR, DEPUTY SHERIFF

LOCATION OF SERVICE: 7 BOYD CREEK ROAD, LEWISTOWN, MT.

Service.....\$

Mileage.....\$

Other.....\$

TOTAL.....\$

Norman J. Mullen
Special Assistant Attorney General
Department of Environmental Quality
Legal Unit, Metcalf Building
P.O. Box 200901
Helena, Montana 59620-0901
Telephone: (406) 444-2630
Attorney for Plaintiff

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS & CLARK COUNTY

IN THE MATTER OF

IN THE MATTER OF

MARVIN MINTYALA, SANDY
MINTYALA, AND MISTER M DISPOSAL
INC., AND PROPERTY LOCATED AT 7
BOYD CREEK RD, PT E2SW4, PT W2SE4,
AS SHOWN ON COS 439, SEC. 8, T. 15N,
R. 19E, FERGUS COUNTY

Case No.: SW 2008-16

**APPLICATION FOR WARRANT FOR
ENTRY AND INVESTIGATION
PURSUANT TO THE MONTANA SOLID
WASTE MANAGEMENT ACT, TITLE
75, CHAPTER 10, PART 2, MCA**

The State of Montana, through the Department of Environmental Quality (Department), hereby applies to this Court for a warrant authorizing Department inspectors and peace officers to enter upon property owned by or in the possession of Marvin and Sandy Mintyala at 7 Boyd Creek Rd, PT E2SW4, PT W2SE4, as shown on COS 439, SEC. 8, T. 15N, R. 19E, near Lewistown, Fergus County, Montana (The Property). The Department applies to undertake an inspection at that property to investigate items of solid waste, metal, heavy equipment, and motor vehicles to determine whether the items will need to be moved or removed from the Property so that the Department can conduct post-closure care to avoid damage from water accumulation and movement, and to allow the Department to inventory heavy equipment, motor vehicles, and

1 metal scrap to determine their extent and value so it can decide if it is worth having a metal
2 salvager remove them and pay the Department for them to partially satisfy the money judgment
3 against Marvin and Sandy Mintyala and Mister M Disposal Inc.

4 The Department submits this application pursuant to the Montana Solid Waste
5 Management Act, Title 75, Chapter 10, Part 2, MCA (MSWMA).

6 Section 75-10-205, MCA, authorizes the Department to inspect for compliance with the
7 solid waste laws: "The department has continuing authority and responsibility to inspect a solid
8 waste management system under the provisions of this part. Inspections may be conducted only
9 during reasonable hours and only after presentation of appropriate credentials identifying the
10 inspector as a duly authorized employee of the department."

11 A solid waste management system is defined as any system that controls the storage or
12 disposal of solid waste. § 75-10-203(12), MCA. Solid waste is defined to include all putrescible
13 and nonputrescible wastes, including but not limited to garbage, rubbish, and construction and
14 demolition wastes. § 75-10-203(11), MCA.

15 The Department obtained a Judgment on September 13, 2002, in DEQ v. Mintyala et al,
16 Case No. DV-2000-146, Tenth Judicial District Court, Fergus County. Paragraph 7 at p. 14 of
17 the Judgment authorized the Department to spend money from the post-closure care trust to pay
18 third parties to care for the landfill during the 30-year post-closure care period. Post-closure care
19 is required at landfills under ARM 17.50.531, which is authorized by § 75-10-204, MCA.

20 The Department has received complaints from a neighbor about water accumulation and
21 movement at the landfill. Its investigation has led it to work on a contract to have a third party
22 conduct remediation work at the landfill. See Affidavit of Robert Smith, Exhibit 1, at ¶¶ 7-9.

23 Some solid waste, metal scrap, motor vehicles, and heavy equipment may be in the path
24 that vehicles and heavy equipment need to travel to gain access to the worksite. The Department

1 wishes to inspect the Property and investigate what it would take to move or remove these items
2 to facilitate the work of a potential contractor. Smith Affidavit, Exhibit 1, at ¶ 9.

3 In addition, the Department has a money Judgment against Marvin and Sandy Mintyala
4 and Mister M Disposal Inc. that is now worth about \$166,000. Scrap metal prices are quite high
5 now, and the Department believes that it may be able to have the metal on the Property sold for
6 recycling to satisfy part of its Judgment. Smith Affidavit, Exhibit 1, at ¶¶ 11-12.

7 The Department received communications from neighbors over the last week that
8 Marvin and Sandy Mintyala were at the property and appeared to be loading trailers with scrap
9 metal. Smith Affidavit, Exhibit 1, at 14.

10 The Department wishes to inventory the vehicles, heavy equipment, and other scrap to
11 determine if it is worth having a metal salvager remove them and pay the Department for the
12 metal to partially satisfy the judgment. Smith Affidavit, Exhibit 1, at 12-13.

13 The Department has an agreement with the Mintyala's attorney dated December 2, 2002,
14 that it may enter onto the landfill Property to conduct post-closure care. The Department does
15 not currently know how to reach the Mintyalas.

16 To inspect the Property and determine what it would take to move or remove the solid
17 waste, metal scrap, motor vehicles, and heavy equipment that may be in the path that vehicles
18 and heavy equipment need to travel to gain access to the worksite, and to inventory the vehicles,
19 heavy equipment, and other scrap to determine if it is worth contracting with a salvager to
20 remove the metal and pay the Department for it, the Department wishes to conduct an inspection
21 of that Property. An inspection would include driving and walking onto the Property, traveling
22 to the places where the route to the remediation project would go, inventorying solid waste, scrap
23 metal, heavy equipment, and motor vehicles there, recording locations of those items on maps,

24

1 recording license plate and vehicle identification numbers, taking photographs of those items,
2 and making notes. Smith Affidavit, Exhibit 1, ¶¶ 12, 13, & 15.

3 Robert Smith and Chad Anderson of the Department's Case Management Bureau will
4 travel to Fergus County to inspect the Property. They will contact the Fergus County Sheriff's
5 office to arrange for a law enforcement officer to accompany them to execute the warrant. They
6 plan to be at the Property on July 23, 2008, and request that they be authorized to reenter the
7 Property as may be necessary during the next 30 days

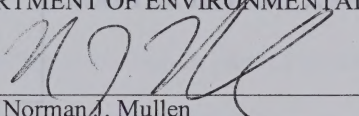
8 The Department has the authority to inspect solid waste systems under § 75-10-205,
9 MCA, and ARM 17.50.207. The Department believes that it is necessary and prudent to obtain a
10 warrant and be accompanied by a peace officer to accomplish its inspection and inventory.

11 Wherefore, the Department requests this Court to issue a Search Warrant.

12 DATED July 21, 2008

13 STATE OF MONTANA
14 DEPARTMENT OF ENVIRONMENTAL QUALITY

15 By

16 
17 Norman J. Mullen
18 Special Assistant Attorney General

1 Norman J. Mullen
2 Special Assistant Attorney General
3 Department of Environmental Quality
4 Legal Unit, Metcalf Building
5 P.O. Box 200901
6 Helena, Montana 59620-0901
7 Telephone: (406) 444-4961

8 Attorney for Plaintiff

9
10 **MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY**

11 IN THE MATTER OF

12 MARVIN MINTYALA, SANDY
13 MINTYALA, AND MISTER M DISPOSAL
14 INC., AND PROPERTY LOCATED AT 7
15 BOYD CREEK RD, PT E2SW4, PT W2SE4,
16 AS SHOWN ON COS 439, SEC. 8, T. 15N,
17 R. 19E, FERGUS COUNTY

**AFFIDAVIT OF ROBERT SMITH IN
SUPPORT OF APPLICATION FOR
WARRANT FOR ENTRY AND
INVESTIGATION PURSUANT TO THE
MONTANA SOLID WASTE
MANAGEMENT ACT, TITLE 75,
CHAPTER 10, PART 2, MCA**

18 I, ROBERT SMITH, being duly sworn, state as follows:

19 1. I am over 18 years of age.

20 2. I reside in Lewis and Clark County.

21 3. I am employed by the Montana Department of Environmental Quality (Department)

22 as an enforcement specialist for the Department's Enforcement Division.

23 4. In that capacity, I work to enforce compliance with regulatory programs within the
24 Department and to prosecute civil enforcement actions against the owners or operators of
properties or facilities that may not be in compliance with applicable laws and rules. Part of my

AFFIDAVIT OF ROBERT SMITH

Page 1

EXHIBIT

1 work entails reviewing Department records to evaluate compliance with Montana's laws, rules,
2 and orders governing solid waste.

3 5. I make this affidavit in support of the attached Application for Warrant for Entry and
4 Investigation, which is sought pursuant to the authority of the Montana Solid Waste Management
5 Act, Title 75, Chapter 10, Part 2, MCA. I base this affidavit upon my review of records in
6 Department files.

7 6. On September 13, 2002, the Department obtained a Judgment against Marvin and
8 Sandy Mintyala and Mister "M" Disposal Inc in Fergus County District Court Case No. DV-
9 2000-146. That Judgment authorized the Department to spend money from a trust fund funded
10 by Mintyala to care for the Mister "M" landfill during the post-closure care period.

11 7. The Department has received complaints from a neighbor of the Mister M property,
12 and has investigated, concerning accumulation of water on the property and possible movement
13 of that water to the neighbor's property.

14 8. The Department's Solid Waste Section is working on creating a contract to pay a
15 third party to remedy the water accumulation and movement issues.

16 9. As part of that contracting process, the Department's contractor may need to move or
17 remove waste materials that are in the path on which vehicles, including heavy equipment, may
18 need to travel to gain access to the worksite. The Department needs to inspect to determine what
19 needs to be done with these materials, vehicles, and equipment.

20 10. Large pieces of heavy equipment, such as Caterpillar tractors, and vehicles such as
21 garbage trucks, are also on the property.

22 11. The Department's Judgment against the Mintyalas and Mister M includes a money
23 Judgment now amounting to about \$166,000.

24

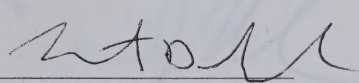
1 12. Metal prices are at high levels, and the Department wishes to determine if the value of
2 the metal on the Property is worth having a salvager come in under a Writ of Execution, remove
3 it for recycling, and pay the Department to satisfy the judgment.

4 13. To make that determination, the Department needs to inventory the vehicles, heavy
5 equipment, and other scrap on the Property.

6 14. The Department received telephone calls last week from neighbors of the landfill
7 stating that the Mintyalas were at the property removing scrap metal. The Department would
8 like to obtain execution on the metal at the Property before it is all removed.

9 15. To inspect and inventory the waste, vehicles, heavy equipment, and scrap metal, the
10 Department needs to drive and walk onto the Property, travel to the places where the route to the
11 remediation project would go, inventory solid waste, scrap metal, heavy equipment, and motor
12 vehicles there, record locations of those items on maps, record license plate and vehicle
13 identification numbers, take photographs of those items, and make notes.

14 16. That completes my affidavit.

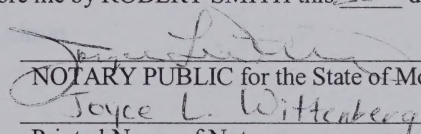
15
16 
ROBERT SMITH

17 STATE OF MONTANA)

18 :ss

18 County of Lewis & Clark)

19 Subscribed and sworn to before me by ROBERT SMITH this 22nd day of July, 2008. ^{\$20}

20
21 
NOTARY PUBLIC for the State of Montana

22 Printed Name of Notary

23 Title Notary Public

24 Residing at Helena

My commission expires: May 21, 2011

(SEAL)

CLOSED

County FERGUS

Facility & # MUSTER M

Closure Landfarm

Finan Assur Liner

GW Corr Meas Methane

GW Monitoring O & M

GW Reports Run-on

Inspections

Other: Legal



Montana Department of
ENVIRONMENTAL QUALITY

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

July 24, 2008

Phyllis D. Smith
Clerk of 10th Judicial District
712 W Main St
Lewistown MT 59457

Re: Return of Service and Filing of 6th Writ of Execution in Montana Department of Environmental Quality v. Mintyala, DV 2000-146

Dear Ms. Smith or Clerk's staff:

I am enclosing a Sheriff's Return of Service and the Sixth Writ of Execution for filing, along with copied first pages and a self-addressed, stamped envelope. I sent them to you by fax today.

Please file the Writ and the Return. Please conform and date-stamp the copied first pages, and please send the copies back to me in the enclosed envelope.

Thank you for your assistance. Please contact me if there are any problems with my request or if you have any questions.

Sincerely,

Norman J. Mullen
Attorney for Department
406-444-4961 voice; 444-4386 fax
nmullen@mt.gov email

encls.

c. DEQ- ENF, WUTMB-SW, chron

 **RECEIVED**

JUL 28 2008

Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau

Norm Mullen
Special Assistant Attorney General
Montana Department of Environmental Quality
1520 E. Sixth Avenue
P.O. Box 200901
Helena, Montana 59620-0901
(406) 444-4961

Attorney for Department

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel. DEPARTMENT
OF ENVIRONMENTAL QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC., LEWISTOWN
LANDFILL, DOMENIC MASSARI, as trustee
for trust holding money in SouthTrust Asset
Management Co. trust account # 2640000519,
CUMBERLAND CASUALTY & SURETY
COMPANY, a Florida Corporation, as
beneficiary of trust holding money in SouthTrust
Asset Management Co. trust account #
2640000519, and SOUTHTRUST ASSET
MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding money
in SouthTrust Asset Management Co. trust
account # 2640000519,

Defendants.

Case No.: DV-2000-146

**SIXTH WRIT OF
EXECUTION & GARNISHMENT**

FROM THE STATE OF MONTANA TO THE SHERIFF OF MISSOULA COUNTY:

WHEREAS, on September 13, 2002, the State of Montana ex rel. Department of
Environmental Quality obtained a judgment in the Montana Tenth Judicial District Court, Fergus
County, against Marvin Mintyala, Sandy Mintyala, and Mister "M" Disposal Inc., as follows:

63

Original or Balance Due on Judgment in the amount of:	\$ 318,363.26
Amount of judgment for which execution issued on 9/18/03	131,556.10
Amount of judgment for which execution issued on 3/4/04	134,942.88
Amount of judgment for which execution issued on 7/12/04	136,382.53
Amount of judgment for which execution issued on 1/20/05	139,405.68
Amount of judgment for which execution issued on 1/12/06	142,825.66
<u>Total sum due and owing on June 8, 2006 after credits and costs:</u>	\$144,182.40

The basis for these amounts is found in the affidavit of Norman J. Mullen, which is attached to this Writ.

NOW, you, the sheriff, are hereby required to make this sum due on the judgment or damages, with interest, costs, and accruing costs, to satisfy the judgment out of the PERSONAL PROPERTY and WAGES of the debtor, Marvin Mintyala, NOT EXEMPT FROM EXECUTION on the day on which the judgment was docketed in Fergus County, or at any time hereafter, and return this writ not less than 10 days nor more than 120 days after the date of issuance subscribed thereon, with a record of your actions endorsed thereon.

Given under my hand this 13th day of June, 2006.

CLERK OF DISTRICT COURT

Phyllis D. Smith
By: Clerk

9-23-06

OFFICE OF THE SHERIFF

STATE OF MONTANA)
) ss.
County of Missoula)

I do hereby certify, that I received the within execution on the 21st day of June, 2006, and on the 23rd day of June, 2006, I served said writ upon Watkins and Shepard Trucking, Inc., Christine Staggs as Officer Manager, and levied against the earnings of **Marvin Mintyala**, one of the said defendants.

That on the 23rd day of June, 2006, I received answer from the employer, "He terminated on 5/12/06 no wages are owing to him."

That on the 26th day of June, 2006, I made return to Montana Department of Environmental Quality, Norm Mullen, attorney for the plaintiff, judgment unsatisfied.

MICHAEL R. McMEEKIN, Sheriff

William Smith

Deputy

ENT, WUTMB-SW 7/5/06 nqm

DBS # 06001718

DATE

J-28-06

PAGE # 016326

He terminated on 5/12/06 no wages are owing to him.

JUN 23 2006
MISSOULA COUNTY SHERIFF
RECEIVED

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA vs. et al
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Case No. DV-2006-146

Plaintiff,

FRANCISE TO CLERK OF COURT
Eighty Writ of Execution

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL
MISTER "M" DISPOSAL INC.,
LEWISTOWN, ARIZONA, DOMINIC
MANSARI, as trustee for trust holding money
in SouthTrust Asset Management Co. trust
accounts # 264000519, CUMBERLAND
CASUALTY & SURETY COMPANY, a
Florida Corporation, as beneficiary of trust
holding money in SouthTrust Asset
Management Co. trust account # 264000519,
and SOUTHTRUST ASSET
MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding
money in SouthTrust Asset Management Co.
trust account # 264000519,

Defendants.

BY

AS

for or of

Office Manager
Watkins & Shepard TRK

1 Norm Mullen
2 Special Assistant Attorney General
3 Montana Department of Environmental Quality
4 1520 E. Sixth Avenue
5 P.O. Box 200901
6 Helena, Montana 59620-0901
7 (406) 444-4961

8 Attorney for Department

9
10 **MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY**

11 STATE OF MONTANA ex rel.
12 DEPARTMENT OF ENVIRONMENTAL
13 QUALITY,

14 Plaintiff,

15 vs.

16 MARVIN MINTYALA and SANDY
17 MINTYALA, as individuals and as officers,
18 directors, and shareholders of Mister "M"
19 Disposal Inc., MISTER "M" DISPOSAL,
20 MISTER "M" DISPOSAL INC.,
21 LEWISTOWN LANDFILL, DOMENIC
22 MASSARI, as trustee for trust holding money
23 in SouthTrust Asset Management Co. trust
24 account # 2640000519, CUMBERLAND
CASUALTY & SURETY COMPANY, a
Florida Corporation, as beneficiary of trust
holding money in SouthTrust Asset
Management Co. trust account # 2640000519,
and SOUTHTRUST ASSET
MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding
money in SouthTrust Asset Management Co.
trust account # 2640000519,

Defendants.

Case No.: DV-2000-146

**PRAECIPE TO CLERK OF COURT-
Eighth Writ of Execution**

RECEIVED

AUG 11 2008

Dept. of Environ. Quality
Waste & Underground
Tank Management Bureau

WUTMB-SW

1 The State of Montana, ex rel. Department of Environmental Quality ("Department"),
2 through its counsel, Norman J. Mullen, is submitting an original proposed eighth Writ of
3 Execution directed to the Sheriff of Fergus County or levying officer, an affidavit supporting the
4 issuance of the Writ, six copies of the Writ, and a self-addressed, stamped envelope (SASE).
5 The Department is also submitting an envelope that it requests the Clerk of Court to forward to
6 the Fergus County Sheriff with the issued Writ and five copies.

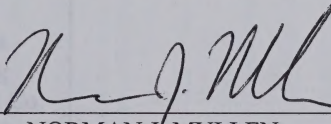
7 The Department requests that the Clerk issue the Writ of Execution and conform the
8 copies. Please send me a conformed copy in the SASE provided. Please forward the original
9 issued Writ and five copies to the Sheriff of Fergus County with the packet enclosed with
10 this Praecipe. That packet contains a praecipe and other required documents for the Sheriff to
11 use in serving the Writ. The Sheriff will then serve the papers on the Mintyalas and Mister M
12 Disposal Inc.

13 I have also included the original Seventh Writ with this mailing. It was not served.

14 The Department requests the Court Clerk to contact the undersigned attorney with any
15 questions or comments, and appreciates the assistance of the Court Clerk and her staff.

16 DATED this 5th day of August, 2008.

17
18 STATE OF MONTANA
19 DEPARTMENT OF ENVIRONMENTAL QUALITY

20 By 
21 NORMAN J. MULLEN
22 Special Assistant Attorney General
23
24

1 Norman J. Mullen
Special Assistant Attorney General
2 Department of Environmental Quality
Legal Unit, Metcalf Building
3 P.O. Box 200901
Helena, Montana 59620-0901
4 Telephone: (406) 444-4961

5 Attorney for Department

6
7 **MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY**

8 STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
9 QUALITY,

10 Plaintiff,

11 vs.

12 MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
13 directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
14 MISTER "M" DISPOSAL INC.,
LEWISTOWN LANDFILL, DOMENIC
15 MASSARI, as trustee for trust holding money
in SouthTrust Asset Management Co. trust
16 account # 2640000519, CUMBERLAND
CASUALTY & SURETY COMPANY, a
17 Florida Corporation, as beneficiary of trust
holding money in SouthTrust Asset
18 Management Co. trust account # 2640000519,
and SOUTHTRUST ASSET
19 MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding
20 money in SouthTrust Asset Management Co.
trust account # 2640000519,

21 Defendants.

Case No.: DV-2000-146

**AFFIDAVIT OF NORMAN J. MULLEN
IN SUPPORT OF REQUEST FOR
EIGHTH WRIT OF EXECUTION**

23 I, Norman J. Mullen, having first been duly sworn, depose and state as follows:

24 1. I am over the age of 18 and a resident of Lewis and Clark County.

DEQ v. Mintyala
Case DV-2000-146
Judgment and Payments
8/7/08

DATE	DESCRIPTION	PRINCIPAL				INTEREST				GRAND TOTAL
		FEES	PENALTY	FINANCIAL ASSURANCE	TOTAL	FEES	PENALTY	FINANCIAL ASSURANCE	RUNNING TOTAL	
9/13/2002	Judgment	12,037.26	1,000.00	305,326.00	318,363.26				0.00	318,363.26
9/19/2002	Interest 9/14-19/2002				318,363.26	19.79	1.64	501.91	523.34	318,886.60
9/19/2002	Bond forfeited- money transf'd to trust			(198,000.00)	120,363.26					120,363.26
9/18/2003	principal owed/increased interest on 9/18/03 when 1st Writ of Execution requested	12,037.26	1,000.00	107,326.00	120,363.26	1,197.13	99.45	10,673.79	12,493.71	132,856.97
1/22/2004	increase in interest when sheriff returns 1st writ 9/19/2002-1/22/04 (125 days)				120,363.26	412.23	34.25	3,675.55	16,615.74	136,979.00
1/22/2004	interest owed to date					1,629.15	135.34	14,851.25		
1/22/2004	Sheriff returns Writ- \$2,155.64 - Sheriff's fees \$83.26 = \$2,072.38	(443.23)			119,920.03	(1,629.15)			14,986.59	134,906.62
3/2/2004	principal owed/increased interest when 2nd Writ Execution Requested	11,594.03	1,000.00	107,326.00	119,920.03	127.06	10.96	1,176.18	16,300.79	
3/2/2004	amounts owed when 2d writ requested					127.06	146.30	16,027.43	16,300.79	136,220.82
7/7/2004	increase in interest 3/3/2004-7/7/2004 (127 days) when sheriff returns 2d writ				119,920.03	403.41	34.79	3,734.36	20,473.35	140,393.38
7/7/2004	interest owed to date					657.53	181.09	19,761.79		
7/7/2004	Sheriff Returns Writ- \$3,256.64 - Sheriff's fees \$78.25 = \$3,178.39	(2,520.86)			117,399.17	(657.53)			19,815.82	137,214.99
7/9/2004	principal owed/increased interest when 3rd Writ of Execution requested	9,073.17	1,000.00	107,326.00		4.97	0.55	58.81	19,880.15	137,279.32
1/12/2005	amts. owed/increased interest when sheriff returns 3d writ 7/10/2004-1/12/2005 (185 days)				117,399.17	459.87	50.68	5,439.81	25,830.51	143,229.68
1/12/2005	interest owed to date					464.84	232.32	25,260.41		
1/12/2005	Sheriff Returns Writ- \$4,055.85 less Sheriff's fees \$82.00 = \$3,973.85	(3,509.01)			113,890.16	(464.84)			25,365.67	139,255.83
1/12/2005	Balances after payment by Sheriff	5,564.16	1,000.00	107,326.00	113,890.16	0.00	232.32	25,260.41		
1/19/2005	principal owed/increased interest when 4th Writ of Execution Requested					10.67	1.92	205.83		
1/19/2005	interest owed to date when 4th Writ of Execution Requested					10.67	234.24	25,466.24		139,601.31
11/16/2005	Interest 1/20/-11/16/2005 (300 days) when sheriff returns 4th writ				113,890.16	457.33	82.19	8,821.32	34,726.51	148,616.67
11/16/2005	amounts owed when sheriff returns 4th writ	5,564.16	1,000.00	107,326.00		478.67	316.43	34,287.56		
11/16/2005	Sheriff Returns Writ- \$7,731.22 less Sheriff's fees \$82.48 = \$7,648.74	(5,564.16)	(1,000.00)		107,326.00	(478.67)	(316.43)	(289.48)	33,641.93	140,967.93
	Balances after payment by Sheriff	0.00	0.00	107,326.00	107,326.00	0.00	0.00	33,998.08	33,998.08	141,324.08
1/10/2006	interest 11/16/05-1/10/06- (56 days) when 5th writ requested					0.00	0.00	1,646.65	35,644.73	
1/10/2006	Total Judgment and Interest Owing on 1/10/06-when 5th Writ Requested									142,970.73

EXHIBIT

1

tabbles

DEQ v. Mintyala
Case DV-2000-146
Judgment and Payments
8/7/08

Interest 1/11/2006-5/31/2006 (140 days)									
5/31/2006	when sheriff returns 5th writ			107,326.00	0.00	0.00	4,116.61	38,114.69	145,440.69
5/31/2006	amounts owed when sheriff returns 5th writ	0.00	0.00	107,326.00	0.00	0.00	39,761.34		0.00
	Sheriff Returns Writ- \$3,222.40 less								
5/31/2006	Sheriff's fees \$82.23 = \$3,140.17	0.00	0.00	107,326.00	0.00	0.00	(3,140.17)	34,974.52	142,300.52
	Balances after payment by Sheriff	0.00	0.00	107,326.00	107,326.00	0.00	0.00	36,621.17	143,947.17
6/8/2006	interest 6/01/06-6/08/06- (8 days) when 6th writ requested				0.00	0.00	235.24	36,856.40	
6/8/2006	Total Judgment and Interest Owning on 6/08/06-when 6th Writ Requested								144,182.40
7/23/2008	interest owed since 6th writ requested						22,788.40		
7/23/2008	Total Judgment and Interest Owning on 7/18/08-when 7th Writ Requested			107,326.00				59,644.80	166,970.80
	interest owed since 7th writ requested						558.68		
8/7/2008	Total Judgment and Interest Owning on 08/07/08-when 8th Writ Requested			107,326.00				60,203.48	167,529.48

NOTES:

- No compounding of interest
- Simple interest accrues at 10-percent per year on the judgment
- Except for the \$198,000 received into trust on 9/19/2002, which was applied 100% to financial assurance principal owing, the monies received are credited in the following order:
 - 1st to fee interest
 - 2nd to fee principal
 - 3rd to penalty interest
 - 4th to penalty principal
 - 5th to financial assurance interest
 - 6th to financial assurance principal

1 Norm Mullen
Special Assistant Attorney General
2 Montana Department of Environmental Quality
1520 E. Sixth Avenue
3 P.O. Box 200901
Helena, Montana 59620-0901
4 (406) 444-4961

5 Attorney for Department

6
7 **MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY**

8 STATE OF MONTANA ex rel. DEPARTMENT
OF ENVIRONMENTAL QUALITY,

Case No.: DV-2000-146

9 Plaintiff,

**EIGHTH WRIT OF
EXECUTION**

10 vs.

11 MARVIN MINTYALA and SANDY
12 MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
13 Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC., LEWISTOWN
14 LANDFILL, DOMENIC MASSARI, as trustee
for trust holding money in SouthTrust Asset
15 Management Co. trust account # 2640000519,
CUMBERLAND CASUALTY & SURETY
16 COMPANY, a Florida Corporation, as
beneficiary of trust holding money in SouthTrust
17 Asset Management Co. trust account #
2640000519, and SOUTHTRUST ASSET
18 MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding money
19 in SouthTrust Asset Management Co. trust
account # 2640000519,

20 Defendants.

21
22 //

23 //

24 //

1 **FROM THE STATE OF MONTANA TO THE SHERIFF OF FERGUS COUNTY OR**
2 **LEVYING OFFICER:**

3 WHEREAS, on September 13, 2002, the State of Montana ex rel. Department of
4 Environmental Quality obtained a judgment in the Montana Tenth Judicial District Court, Fergus
5 County, against Marvin Mintyala, Sandy Mintyala, and Mister "M" Disposal Inc., as follows:

6	Original or Balance Due on Judgment in the amount of:	\$ 318,363.26
7	Amount of judgment for which execution issued on 9/18/03	131,556.10
8	Amount of judgment for which execution issued on 3/4/04	134,942.88
9	Amount of judgment for which execution issued on 7/12/04	136,382.53
10	Amount of judgment for which execution issued on 1/20/05	139,405.68
11	Amount of judgment for which execution issued on 1/12/06	142,825.66
12	Amount of judgment for which execution issued on 6/13/06	144,182.40
13	Amount of judgment for which execution issued on 7/24/08	166,970.80

14 **Total sum due and owing on August 7, 2008 after credits and costs:** **\$167,529.48**

15 The basis for these amounts is found in the affidavit of Norman J. Mullen, which is attached to
16 this Writ.

17 NOW, you, the sheriff or levying officer, are hereby required to make this sum due on the
18 judgment or damages, with interest, costs, and accruing costs, to satisfy the judgment out of the
19 PERSONAL PROPERTY and WAGES of the debtor, Marvin Mintyala, Sandy Mintyala, and
20 Mister M Disposal Inc., NOT EXEMPT FROM EXECUTION on the day on which the judgment
21 was docketed in Fergus County, or at any time hereafter, and return this writ not less than 10
22 days nor more than 120 days after the date of issuance subscribed thereon, with a record of your
23 actions endorsed thereon.

24 Given under my hand this _____ day of _____, 2008.

CLERK OF DISTRICT COURT

By: _____

1 Norman J. Mullen
2 Special Assistant Attorney General
3 Montana Department of Environmental Quality
4 1520 E. Sixth Avenue
5 P.O. Box 200901
6 Helena, Montana 59620-0901
7 (406) 444-4961
8 Attorney for Department

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MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC.,
LEWISTOWN LANDFILL, DOMENIC
MASSARI, as trustee for trust holding money
in SouthTrust Asset Management Co. trust
account # 2640000519, CUMBERLAND
CASUALTY & SURETY COMPANY, a
Florida Corporation, as beneficiary of trust
holding money in SouthTrust Asset
Management Co. trust account # 2640000519,
and SOUTHTRUST ASSET
MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding
money in SouthTrust Asset Management Co.
trust account # 2640000519,

Defendants.

Case No.: DV-2000-146

**PRAECIPE TO SHERIFF-
8th Execution**

1 **TO THE SHERIFF OF FERGUS COUNTY, MONTANA:**

2 I, Norman J. Mullen, represent the State of Montana's Department of Environmental
3 Quality ("Department") in this matter. I have asked the Clerk of the District Court for Fergus
4 County to provide you with an original and five copies of a Writ of Execution issued by that
5 Court. I am also enclosing the affidavit submitted to the Clerk with the writ, an original and five
6 copies of a Notice of Seizure and a Notice of Exemption Rights, a self-addressed stamped
7 envelope, and stamped envelopes addressed to Marvin Mintyala, Sandy Mintyala, and Mister M
8 Disposal Inc.

9 I request that you please serve the Writ of Execution, Notice of Seizure, and Notice of
10 Exemption Rights upon defendants Marvin Mintyala, Sandy Mintyala, and Mister M Disposal
11 Inc. by delivering a copy to them at their property at 7 Boyd Creek Road east of Lewistown in
12 Fergus County. The Department wishes to execute on heavy equipment, motor vehicles, and
13 scrap metal more fully described on Exhibit A to the Notice of Seizure. It is all located at the 7
14 Boyd Creek Road property.

15 The items of personal property to be levied upon are large, ponderous and incapable of
16 manual delivery. It is therefore proper to levy upon them where they are located, without seizure
17 and transport to an impound lot. See Corpus Juris Secundum, at Executions § 111(b), which
18 states that on a writ of execution, the sheriff or levying officer may seize and levy upon large or
19 ponderous items on site, rather than having to take them into possession, move, and store them.

20 Please post the Notice of Seizure at the gate to 7 Boyd Creek Road. That gate has a lock
21 on it, and the Department and the Mintyalas have keys to it. Since the Mintyalas may be using
22 the gate to gain access to their mobile home and a camp trailer currently at the property, it does
23 not seem useful to put another lock on the gate.

24

1 Once the items have been levied upon, I request that you sell them at a Sheriff's Sale.

2 However, I believe it may be wise to obtain a court order authorizing a walk-through at the Boyd
3 Creek property by the bidders, and for authorization for the successful bidder to enter onto and
4 remain on the property for up to 30 days to remove the purchased personal property. To do this,
5 I believe I may need to give the court specific dates for the walk-through and the sale. So, I
6 believe it makes the most sense to hold off on issuing the Notice of Sheriff's Sale until the 10-
7 day exemption/objection deadline has passed. Then, I will ask the court to issue an order
8 authorizing the walk-through and the successful bidder's entry to coordinate with the dates your
9 office sets for the walk-through and sale.

10 I have provided a Notice of Sale for posting and for use in publishing an advertisement in
11 the local newspaper. Please do not start the notification process until the 10-day
12 exemption/objection period has passed, and until I have obtained a court order as discussed
13 above. I request that, in the Notice of Sale, you condition the sale on acceptance by the bidders
14 of the terms in the Agreement that I am submitting with this Praecept. The Agreement is based
15 on the language used in the Department's junk vehicle crushing contracts.

16 I have been informed that the Mintyalas have been at the Boyd Creek property during the
17 last few weeks. If they cannot be found at that Property, their last known address is Marvin and
18 Sandy Mintyala, 1395 Fair St Trlr 16, Clarkston, WA 99403-2374. The address for Mister M
19 Disposal Inc. listed by the Secretary of State is Marvin E. Mintyala, Agent, HCR 85 Box 4066,
20 Lewistown MT 59457-0000. I have provided copies of the documents to be served and
21 envelopes so that Mister M Disposal Inc. may be served at that address and on Marvin Mintyala
22 at his address in Clarkston.

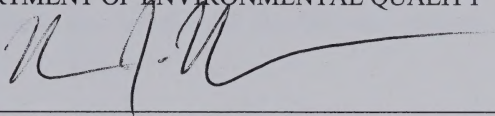
23 When you mail me your return of service for the Writ of Execution in the SASE, please
24 also include the service of the Notices of Seizure and of Exemption Rights.

If you have any questions or comments, please call me at (406) 444-4961. Thank you very much for your assistance.

DATED August 7, 2008.

STATE OF MONTANA
DEPARTMENT OF ENVIRONMENTAL QUALITY

By:


NORMAN J. MULLEN
Special Assistant Attorney General

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA et al.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Case No. DV 2006-146

Plaintiff,

NOTICE OF SEIZURE

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Master "M"
Disposal Inc., MASTER "M" DISPOSAL,
MASTER "M" DISPOSAL INC.,
LEWISTOWN LANDFILL, DOMENEC
MASSARI, as trustee for trust holding money
in SouthTrust Asset Management Co. trust
account # 264000519, CUMBERLAND
CASUALTY & SURETY COMPANY, a
Florida Corporation, as beneficiary of trust
holding money in SouthTrust Asset
Management Co. trust account # 264000519,
and SOUTHTRUST ASSET
MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding
money in SouthTrust Asset Management Co.
trust account # 264000519.

Defendants.

Fergus County Sheriff's Department
Civil Unit
PO Box 180
Lewistown, Mt. 59457
406-535-3415

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC.,
LEWISTOWN LANDFILL, DOMENIC
MASSARI, as trustee for trust holding money
in SouthTrust Asset Management Co. trust
account # 2640000519, CUMBERLAND
CASUALTY & SURETY COMPANY, a
Florida Corporation, as beneficiary of trust
holding money in SouthTrust Asset
Management Co. trust account # 2640000519,
and SOUTHTRUST ASSET
MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding
money in SouthTrust Asset Management Co.
trust account # 2640000519,

Defendants.

Case No.: DV-2000-146

NOTICE OF SEIZURE

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_____ (name) (☐ personally) (☐ by mail) on the _____ day of _____, 2008. The Fergus County Sheriff has levied upon the following property at 7 _____ Boyd Creek Road, Fergus County, Montana:

The sheriff will retain control of the above property at 7 Boyd Creek Road for a period of 10 working days from the date the property was seized. Failure to file a claim of exemption within 10 days will result in the sheriff proceeding forward with an execution sale of the property levied upon.

If you have any questions or plan to claim an exemption, you may wish to contact your attorney, or the Clerk of the 10th Judicial District Court, Phyllis D. Smith, at 712 W Main Lewistown MT 59457, (406) 535-5026 (voice), 406-535-6076 (fax).

THOMAS L. KILLHAM, SHERIFF

PEGGY L. SANDMAN,
COMMUNICATIONS OFFICER

	Make	Model	Color	VIN #	License #	Comments	Reg. Owner	Street/PO Box	City	State	Zip Code
				Page 2							
52	Dodge	400 Tow Truck	White & Maroon	11029349							
53	Ford '40's'	Winch/Tow Truck	Red	No Vin Available		No doors					
54	Mercury '80's'	Zephyr Sedan	Blue	No Vin Available							
55		Crawler	Yellow			Front roll cage with two braces and a round black feature on the cab					
56		Crawler	Yellow			No enclosure for operator					
57		Crawler	Red								
58		Crawler	Yellow			Front roll cage with one brace.					
59		Crawler	Yellow			No track on left side.					
60		Crawler	Yellow			Enclosure, but no front roll bars.					
61		Crawler	Yellow/Black			Roll cage is black.					
62		Crawler	Yellow/Gray			No blade or roll cage.					
63		Pull type scraper	Yellow			Unattached					
64		Self propelled scraper	Yellow								
65		Scrap Metal				Throughout property					
66		Pull type scraper	Yellow			Wheels near hitch					
67		Tractor	Red								
68		Horse Trailer	Brown								
69		Goose Neck Trailer	Red								
70		Goose Neck Trailer	Red/White								

	Make	Model	Color	VIN #	License #	Comments	Reg. Owner	Street/PO Box	City	State	Zip Code
1	Ford		White	1FDWD74N5BVJ274373			No Records Available				
2	Mack	Truck	Yellow	No Vin Available		No Rear End	No Records Available				
3	Ford	Truck	White	07-79	8T-13506	Garbage Truck	Mintyala, Marvin E.	Gilt Edge Rte	Lewistown	MT	59457
4	Ford		Yellow	No Vin Available	8T-6216		No Records Available				
5	Ford	Car	Green	FY6E2Y4FY6B06059868		Car Body Only	No Records Available				
6	Chrysler	Car	White/Blue	YM43T3C134012	86-754	Idaho Plate	No Records Available				
7	Jeep	Cherokee	Yellow/Brown	J6F16MA059934	8A-AB40		Martin, John	144 Saphire Drive	Lewistown	MT	59457
8	Dodge	Utility Truck	White	D31BJ2S550039			Mintyala, Marvin E.	HC 85 Box 4066	Lewistown	MT	59457
9	GMC		Blue	TKL147J501036			Mintyala, Marvin E.	Gilt Edge Rte	Lewistown	MT	59457
10	Dodge	Club Cab	White	W17AE45009232			No Records Available				
11	GMC	Garbage Truck	White	TCM67TV602224			Mister M Disposal, Inc.	HC 85 Box 4066	Lewistown	MT	59457
12	Ford	Garbage Truck	Orange	C75FUB29447			Mintyala, Marvin E.	Gilt Edge Rte	Lewistown	MT	59457
13	Ford	Garbage Truck	White	No Vin Available		Mister M Disposal	No Records Available				
14	Freightliner	Front Cab Only	White/Blue	No Vin Available			No Records Available				
15	Ford	Cab	White	CHASSIS-CAB ???? ?	8T-7970		No Records Available				
16	Ford		Blue	C76EUG61582			No Records Available				
17	Ford		White	No Vin Available	8T-8088		No Records Available				
18	Mercury	Car	Brown	F8K35T529372	8P-1505A		Elfering, Thomas	243 SW Cedar	Lewistown	MT	59457
19	Chrysler	Car	Crème/Brown	YM43T2C299714			Mintyala, Marvin E.	Gilt Edge Rte	Lewistown	MT	59457
20	Chrysler	Car	Green/White	YM43T4C171361			Mintyala, Marvin E.	Gilt Edge Rte	Lewistown	MT	59457
21	Chrysler	Car	Silver	YM43T5C132887			Mintyala, Sandra P.	Gilt Edge Rte	Lewistown	MT	59457
22	Chrysler	Car	Maroon	YM43T4C162986			Mintyala, Marvin E.	Gilt Edge Rte	Lewistown	MT	59457
23	Ford	Truck	White	No Vin Available	8T-4103	Lewistown Coke	No Records Available				
24	Winnebago	Motorhome	White/Crème	6381860945	8P-2154A		Mintyala, Marvin and Sandra	HC 85 Box 4066	Lewistown	MT	59457
25	Hi	Truck	Yellow/White	17073			No Records Available				
26	Chevrolet	Pick-up	Green/Red	CE330S170736			No Records Available				
27	Buick		Blue/Green	1G4AB69XXDW487790			Mintyala, Penny	HCR 85 Box 4066	Lewistown	MT	59457
28	Ford	500 Truck	Blue	F50CKH50338	8T-386		Mintyala, Marvin E.	Gilt Edge Rte	Lewistown	MT	59457
29	Ford	750 Truck	White	N75KU720591			No Records Available				
30	Jeep	Wagon 4WD	White/Gray	No Vin Available			No Records Available				
31	Ford	C-800	Red	No Vin Available		Cab Only	No Records Available				
32	Garbage Compactor		White	No Vin Available			No Records Available				
33	Ford	Pick-up/Dually	Blue/White Top	T70D0U12018	8T-14706	Double dually w/no box	Mintyala, Marvin E.	Gilt Edge Rte	Lewistown	MT	59457
34	Ford	Garbage Truck	White/Blue Primer	C75EUB14691	8T-2082A		Mister M Disposal, Inc.	HCR 85 Box 4066	Lewistown	MT	59457
35	Chevrolet	Garbage Truck	White	Partial Vin - 7769?	8-417		No Records Available				
36	Chevrolet	Pick-up	Brown/White Top	No Vin Available	8T-5094		No Records Available				
37	Chevrolet	Thriftmaster	Blue, Brown, Green	53J003841			No Records Available				
38	Ford	Garbage Truck	White	No Vin Available	8T-4514		No Records Available				
39	Dodge	500 Pick-up	Orange	M6D5 H06924		No Bed	No Records Available				
40	Chrysler	300 Sedan	Black	53151681			No Records Available				
41	Dodge	Club Cab 4x4	Brown 2 tone	1B7KW25T9BS184755			M and S Enterprises	201 E Lyndale PMB 119	Helena	MT	59601
42	Chevrolet '85'	Pick-up	Brown 2 tone	1CCHK34J0FS145263			No Records Available				
43	Ford	Garbage Truck	Red/White box	F75FUA30621			Mintyala, Marvin E.	Gilt Edge Rte	Lewistown	MT	59457
44	GMC '84'	Garbage Truck	Blue/Blue box	1GDS7D4G4BV582947			No Records Available				
45	GMC 8500	Garbage Truck	White/White box	TCE678V565132			Mister M Disposal, Inc.	HC 85 Box 4066	Lewistown	MT	59457
46	Ford 750	Garbage Truck	Red/White box	C76FUF92547		Cab Over style	No Records Available				
47	Mack	Garbage Truck	Green/White	MB401 P 2569			No Records Available				
48	Chevy '30's'	Sedan	Black			30 painted on driver's door					
49	International	Garbage Truck	White/White box	416080g177738		Loadstar 1600					
50	International	Garbage Truck	White	FD117956 F		No Bed					
51	Ford	Garbage Truck	White/White box	No Vin Available		No Doors					

EXHIBIT

A

Fergus County Sheriff's Department
Civil Unit
PO Box 180
Lewistown, Mt. 59457
406-535-3415

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC.,
LEWISTOWN LANDFILL, DOMENIC
MASSARI, as trustee for trust holding money
in SouthTrust Asset Management Co. trust
account # 2640000519, CUMBERLAND
CASUALTY & SURETY COMPANY, a
Florida Corporation, as beneficiary of trust
holding money in SouthTrust Asset
Management Co. trust account # 2640000519,
and SOUTHTRUST ASSET
MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding
money in SouthTrust Asset Management Co.
trust account # 2640000519,

Defendants.

Case No.: DV-2000-146

NOTICE OF EXEMPTIONS

1 **NOTICE TO THE ABOVE NAMED DEFENDANTS:**

2 A Writ of Execution has been issued by the above-entitled court. The Sheriff of Fergus
3 County has been instructed to levy that execution upon your property, not exempt by law, to
satisfy the Judgment upon which the Writ of Execution is based.

4 A partial list of exemptions to which you may be entitled follows:

5 Personal Earnings

Definitions:

6 "Earnings": Compensation for personal services, whether called wages, salary,
commissions, bonuses and payments to a pension or retirement program.

7 "Disposable Income": Earnings after deductions required by law (Federal and
State withholding).

8 "Garnishment": Any legal or equitable procedure by which earnings of an
individual are required to be withheld for payment of a debt.

9 MAXIMUM garnishment is LESSER of:

10 25% of disposable earnings, or

11 The amount of disposable earnings for the pay period exceeding 30 times the federal
minimum hourly wage.

12 The State of Montana had adopted the same formula as the federal law concerning wage
exemptions. Section 25-13-614, Montana Codes Annotated (M.C.A.)

13 Personal Property

14 The judgment debtor's interest not to exceed \$4,500.00 in aggregate value, to the
15 extent of a value not exceeding \$600.00 in any item of property in household
furnishings and goods, appliances, jewelry, wearing apparel, books, firearms and
16 other sporting goods, animals, feed crops and musical instruments. Section 25-
13-609(1), M.C.A.

17 Motor Vehicle

18 The judgment debtor's interest not to exceed \$2,500.00 in value, in one motor
vehicle. Section 25-13-609(2), M.C.A.

19 Property Required in Trade or Profession

20 The judgment debtor's interest, not to exceed \$3,000.00 in value, in any
implements, professional books, or tools, of the trade of the judgment debtor or a
dependent of the judgment debtor. Section 25-13-609(3), M.C.A.

21 Unmatured Life Insurance Contracts

22 The judgment debtor's interest, not to exceed \$4,000.00 in value, in any
unmatured life insurance contracts owned by him. Section 25-13-609(4), M.C.A.

1 Real Property - the Homestead Exemption

2 1. The homestead consists of the dwelling house or mobile home, and all
3 appurtenances in which the claimant resides and the land, if any, on which the
4 same is situated. Section 70-32-101, M.C.A.

5 2. A homestead may not exceed in value \$100,000.00. 70-32-104, M.C.A.

6 If you believe the Sheriff has levied the Writ of Execution upon and taken any property to
7 which you are entitled to an exemption, you must file a claim in writing with the clerk of the
8 above entitled court so they can make arrangements for a hearing to determine whether the
9 property is exempt. If you plan to claim an exemption, you must do this within 10 working days
10 from the date the monies or property is seized. Failure to file a claim within 10 working days
11 will result in the sheriff releasing the monies executed upon or proceeding forward with an
12 execution sale of any property obtained. For more information, contact the Clerk of the 10th
13 Judicial District Court at 712 W Main Lewistown MT 59457, (406) 535-5026 (voice), 406-535-
14 6076 (fax).

15 Dated this _____ day of _____, 2008.

16 THOMAS L. KILLHAM, SHERIFF

17 _____
18 PEGGY L. SANDMAN,
19 COMMUNICATIONS OFFICER

Fergus County Sheriff's Department
Civil Unit
PO Box 180
Lewistown, Mt. 59457
406-535-3415

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC.,
LEWISTOWN LANDFILL, DOMENIC
MASSARI, as trustee for trust holding money
in SouthTrust Asset Management Co. trust
account # 2640000519, CUMBERLAND
CASUALTY & SURETY COMPANY, a
Florida Corporation, as beneficiary of trust
holding money in SouthTrust Asset
Management Co. trust account # 2640000519,
and SOUTHTRUST ASSET
MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding
money in SouthTrust Asset Management Co.
trust account # 2640000519,

Defendants.

Case No.: DV-2000-146

SHERIFF'S SALE

To be sold at sheriff's sale on the ____ day of _____, 2008, at ____ AM/PM, at _____:

As one lot, for scrap metal value by total tons multiplied by price per ton only:

Eight crawler tracked heavy equipment vehicles

Three scrapers

A tractor

Three trailers

Approximately 54 motor vehicles, including garbage and pickup trucks, and cars

Various scrap metal

A walk-through for potential bidders to view the sale items will be held at 7 Boyd Creek Road on the ____ day of _____, 2008, at ____ AM/PM. The sale is subject to the terms contained in an Agreement available from the Fergus County Sheriff at the address on this notice.

FERGUS COUNTY SHERIFF

BY _____

AGREEMENT ON CONDITIONS TO SHERIFF'S SALE OF SCRAP METAL

These conditions pertain to the Sheriff's Sale in State of Montana ex rel Department of Environmental Quality v. Marvin Mintyala, Sandy Mintyala, Mister "M" Disposal Inc., et al, Montana 10th Judicial District Court Case No. DV 2000-146. In that Sheriff's Sale, the Fergus County Sheriff will offer for sale heavy equipment, motor vehicles, and scrap metal (the "Materials") at 7 Boyd Creek Road, Fergus County, Montana. The successful bidder agrees to the following:

SECTION I: SERVICES

A. Bidder agrees to do the following concerning the Materials at the **Marvin and Sandy Mintyala** property at 7 Boyd Creek Road, Fergus County, Montana (the "Property"):

1. Prepare all Materials at the Property for removal, transport, and recycling.
2. Operate in such a manner as to not violate any laws or rules of the State of Montana, including, but not limited to, the Montana Clean Air Act and the Montana Solid Waste Management Act or any federal laws and rules; Bidder shall transport the Materials in such a manner as to not allow any debris or garbage to be deposited on the roadways or other land. Should any debris or garbage escape during transport, Bidder shall clean up such material and dispose of it in the local licensed landfill.
3. Not burn anything at the Property, and to provide adequate fire protection equipment to control any and all fires that may occur as a result of performance of this contract.
4. Repair any damage to the Property, including fences, caused by Bidder's performance of this purchase to the satisfaction of the Fergus County Sheriff as soon as possible after it occurs.
5. Consult with Joseph Blaine of the Montana Department of Environmental Quality's Solid Waste Section, PO Box 200901 Helena MT 59620-0901, ph. 406-444-9879, email JBlaine@mt.gov concerning protection of the integrity of the landfill cap and other systems at the Property and conduct all work necessary to remove Materials purchased in a manner that protects the integrity of the landfill cap and monitoring wells at the Property as shown in a map attached to this Agreement, and use Best Management Practices such as route selection, signs, caution tape, or temporary fencing to avoid damaging ponds, buildings, or other landfill facilities or systems. Bidder shall rehabilitate and revegetate marks made by its vehicles as necessary to avoid erosion.
6. Recycle all Materials as scrap, and not sell uncrushed heavy equipment, motor vehicles, or motor vehicle component parts removed from the Property.

7. Contact, at least **24 hours prior to beginning removal of the Materials and, again, prior to completing its removal**, the Sheriff's liaison to this Agreement noted in Section XIII. Entering the property without first contacting this person could be considered a criminal trespass.

B. Bidder is aware, and agrees, that because some of the work might have to take place after 5:00 p.m. on a weekday, or on a weekend, it must make arrangements with the Sheriff to arrive at and leave the Property only at times authorized by Court order. Bidder is responsible for securing the Materials it purchased. If Bidder requires security services of the Sheriff or a third party for which a charge will be made, Bidder is responsible for those costs.

C. Bidder shall provide the Sheriff, within 15 days after Bidder removes all Materials and completes work at the site, with a report that documents the weight of the scrap metal removed, and the hours worked each day.

SECTION II: DATES TO COMMENCE AND COMPLETE SERVICES

Bidder shall complete removal from the Property of the Materials listed in Section IA 1 within **30 days after the sheriff's sale**.

SECTION III: CONSIDERATION

In consideration for receiving the Materials at the Property, Bidder shall pay the Sheriff at the Sale an amount that equals the Bidder's estimate of the number of tons of metal there multiplied by the price per ton offered by Bidder. At the time Bidder documents the weight of the Materials removed under Section I.C., if the weight of the Materials removed was greater than that estimated, Bidder shall pay the Sheriff for the additional tonnage multiplied by the price per ton offered by Bidder at the Sale. If the weight removed was less than that estimated, the Sheriff shall reimburse Bidder for the excess of the tonnage bid over that removed multiplied by the price per ton offered by Bidder at the Sale.

SECTION IV: JURISDICTION AND VENUE

The laws of Montana govern this Sale and Agreement. The parties agree that any litigation concerning this Agreement must be brought in the Tenth Judicial District in and for the County of Fergus, State of Montana, and the parties consent to personal jurisdiction, subject matter jurisdiction, and venue in that court. Each party shall pay its own costs and attorney fees.

SECTION V: MODIFICATION AND PREVIOUS AGREEMENTS

This Agreement, with the bid sheet submitted by successful Bidder contains the entire agreement between the parties, and no statements, promises, or inducements made by either party that are not contained in this Agreement are valid or binding. This Agreement may not be enlarged, modified, or altered except by a writing signed by both parties. No change, addition, or erasure of any printed portion of this Agreement is valid or binding upon either party.

SECTION VI: ACCOUNTING, AUDITING, RECORD RETENTION, COST PRINCIPLES, AND ACCESS TO RECORDS

1. Bidder shall maintain books, records, documents, other evidence directly pertinent to performance of work under Agreement and current accounting for all funds received and expended pursuant to Agreement in accordance with generally accepted accounting principles. Bidder's accounting system must be able to allocate costs associated with Agreement in a manner that keeps these costs separate from the costs of other contracts.
2. Bidder shall provide the Sheriff access to all such books, records, documents of the activities covered by Agreement, as may be necessary in determining compliance with the terms of Agreement
3. Audits conducted under this provision shall be in accordance with generally accepted auditing standards as established by the American Institute of Certified Public Accountants and with established procedures and guidelines of the reviewing or auditing agency(ies).
4. Bidder agrees to disclose all information and reports resulting from access to the records maintained in paragraph (1) of this section to Sheriff.
5. Bidder agrees to retain all financial records for three years.
6. Bidder shall provide the Sheriff access to records at any reasonable time for as long as Bidder maintains the records.

SECTION VII: SEPARABILITY

A declaration by any court, or any other binding legal source, that any provision of this Agreement is illegal and void shall not affect the legality and enforceability of any other provision of this Agreement Conditions, unless the provisions are mutually dependent.

SECTION VIII: HOLD HARMLESS AND INDEMNIFICATION

Bidder agrees to protect, defend, and save the Sheriff, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Bidder's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts, omissions or negligence of Bidder and/or its agents, employees, representatives, assigns, subcontractors or from Bidder's failure to comply with the requirements of this Agreement or with all federal, state, and local laws, rules, regulations, and ordinances applicable to the work to be done under Agreement, except the sole negligence of Sheriff.

SECTION IX: ASSESSED PENALTIES

1. If all materials are not removed from the Property by 30 days after the sale, Bidder shall pay Sheriff one thousand dollars (\$1,000) per day for each day in addition to 30 days until all materials are removed.

SECTION X: INDEPENDENT CONTRACTOR STATUS AND WORKERS' COMPENSATION

1. The parties to Agreement agree that Bidder is an independent contractor. Bidder represents and agrees that no agent, employee, or servant of Bidder is or may be deemed to be the employee, agent, or servant of Sheriff. Bidder is solely and entirely responsible for the acts of its employees, agents, servants, and subcontractors during the performance of Agreement. As an independent contractor, Bidder agrees that it, not Sheriff, is responsible for providing benefits to its employees, agents, or servants, including, but not limited to, unemployment insurance and workers' compensation coverage, and covenants that it will continue to provide legally required benefits during the term of Agreement.
2. Bidder is required to comply with the provisions of the Montana Workers' Compensation Act while performing work subject to this Agreement.

SECTION XI: GENERAL LIABILITY INSURANCE

1. **General Requirements:** Bidder shall maintain for the duration of Agreement, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability which may arise from or in connection with the performance of the work by Bidder, and/or its agents, employees, assigns, or subcontractors. The insurance shall cover such claims as may be caused by any negligent act or omission by Bidder, and/or its agents, employees, assigns, or subcontractors.
2. **Primary Insurance:** Bidder's insurance coverage shall be primary insurance with respect to the Sheriff, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by Sheriff, its officers, officials, employees or volunteers shall be in excess of Bidder's insurance and shall not contribute with it.
3. **Specific Requirements for Commercial General Liability:** Bidder shall purchase and maintain Occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$500,000 per occurrence and \$1,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Bidder and/or its officers, agents, representatives, assigns or subcontractors.
4. **Specific Requirements for Automobile Liability:** Bidder shall purchase and maintain coverage with split limits of \$500,000 per person (personal injury), \$1,000,000 per accident (personal injury), and \$100,000 per accident (property damage) to cover such claims as may be caused by any act, omission, or negligence of Bidder and/or its officers, agents, representatives, assigns or subcontractors.
5. **Additional Insured Status:** Sheriff, its officers, officials, employees, and volunteers are to be covered as additional insureds for liability arising out of: activities performed by or on behalf of Bidder, including the insured's general supervision of Bidder; products and completed operations; premises owned, leased, occupied, or used; and for automobiles owned, leased, hired, or borrowed by Bidder.
6. **Deductibles and Self-Insured Retentions:** Any deductible or self-insured retention must be declared to and approved by Sheriff. At the request of Sheriff either:
 - a. Bidder shall reduce or eliminate such deductibles or self-insured retention with respect to Sheriff, its officers, officials, employees, and volunteers; or
 - b. Bidder shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

7. Certificate of Insurance/Endorsements: Bidder shall cause a certificate of insurance to be delivered to Sheriff within 10 days of the signing of Agreement. The certificate must indicate compliance with the insurance coverages and the required limits set forth in this section of Agreement. The required insurance must be maintained in force and effect for the duration of Agreement. Bidder must notify Sheriff immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. Failure to comply with this requirement may result in termination per Section IV of Agreement.

SECTION XII: REGISTRATION WITH THE SECRETARY OF STATE

A business intending to transact business in Montana must register with the Secretary of State. If Bidder was created in another state or country, and is transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA, it must register with the Secretary of State and obtain a certificate of authority to show that it is in good standing in Montana. A copy of the certificate or, if this is the first time Bidder has done business in Montana, proof of application for certificate, must be provided to Sheriff before Bidder starts work at the Property.

SECTION XIII: LIAISONS

Bidder's liaison to Sheriff for purposes of Agreement is _____ or successor at Bidder's address listed below. [phone: _____]

Sheriff's liaison to Bidder for purposes of Agreement is Peggy Sandman or successor at Fergus county Sheriff- Civil Division at Sheriff's address listed below, and at 406-535-3415 (voice) and 406-535-3860 (fax).

SECTION XIV: EXECUTION

This Agreement consists of 7 pages. The original is to be retained by Sheriff. A copy of the original has the same force and effect for all purposes as the original.

To express the parties' intent to be bound by the terms of Agreement, they have executed this document on the dates set out below.

BIDDER: _____

Date

BY: _____
Signature

Printed name and title

(address)

(Federal Employer's ID # or, if none, Social Security #)

FERGUS COUNTY SHERIFF

Date

BY: _____
Signature

Printed name and title

1 Norm Mullen
Special Assistant Attorney General
2 Montana Department of Environmental Quality
1520 E. Sixth Avenue
3 P.O. Box 200901
Helena, Montana 59620-0901
4 (406) 444-4961

5 Attorney for Department
6

7 **MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY**

8 STATE OF MONTANA ex rel. DEPARTMENT
9 OF ENVIRONMENTAL QUALITY,

10 Plaintiff,

11 vs.

12 MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
13 Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC., LEWISTOWN
14 LANDFILL, DOMENIC MASSARI, as trustee
for trust holding money in SouthTrust Asset
15 Management Co. trust account # 2640000519,
CUMBERLAND CASUALTY & SURETY
16 COMPANY, a Florida Corporation, as
beneficiary of trust holding money in SouthTrust
17 Asset Management Co. trust account #
2640000519, and SOUTHTRUST ASSET
18 MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding money
19 in SouthTrust Asset Management Co. trust
account # 2640000519,

20 Defendants.
21

Case No.: DV-2000-146

**SEVENTH WRIT OF
EXECUTION**

22 **FROM THE STATE OF MONTANA TO THE SHERIFF OF MISSOULA COUNTY:**

23 WHEREAS, on September 13, 2002, the State of Montana ex rel. Department of
Environmental Quality obtained a judgment in the Montana Tenth Judicial District Court, Fergus
24 County, against Marvin Mintyala, Sandy Mintyala, and Mister "M" Disposal Inc., as follows:

1	Original or Balance Due on Judgment in the amount of:	\$ 318,363.26
2	Amount of judgment for which execution issued on 9/18/03	131,556.10
3	Amount of judgment for which execution issued on 3/4/04	134,942.88
4	Amount of judgment for which execution issued on 7/12/04	136,382.53
5	Amount of judgment for which execution issued on 1/20/05	139,405.68
6	Amount of judgment for which execution issued on 1/12/06	142,825.66
7	Amount of judgment for which execution issued on 6/13/06	144,182.40
8		
9	<u>Total sum due and owing on July 23, 2008 after credits and costs:</u>	\$166,970.80

10 The basis for these amounts is found in the affidavit of Norman J. Mullen, which is attached to this Writ.

11 NOW, you, the sheriff, are hereby required to make this sum due on the judgment or
12 damages, with interest, costs, and accruing costs, to satisfy the judgment out of the PERSONAL
13 PROPERTY and WAGES of the debtor, Marvin Mintyala, NOT EXEMPT FROM
14 EXECUTION on the day on which the judgment was docketed in Fergus County, or at any time
15 hereafter, and return this writ not less than 10 days nor more than 120 days after the date of
16 issuance subscribed thereon, with a record of your actions endorsed thereon.

17 Given under my hand this 24th day of July, 2008.

18 CLERK OF DISTRICT COURT

19 Rhyllis D. Smith
20 By: clerk





Montana Department of
ENVIRONMENTAL QUALITY

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

Via First Class Mail

March 8, 2012

Torger Oaas
Attorney at Law
618 W. Main, Suite 201
P.O. Box 76
Lewistown, MT 59457

RECEIVED ^{RT}

MAR 09 2012

DEPT. OF ENVIRO. QUALITY
WASTE & UNDERGROUND TANK
MANAGEMENT BUREAU

RE: Chromey et al. v MTDEQ, Tenth Jud. Dist. No. DV-2012-15

Mr. Oaas,

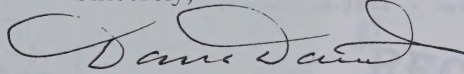
This letter confirms our conversation earlier this morning and covers return of the Notice of Complaint, Acknowledgement and Waiver, and Complaint in the above-referenced matter as we discussed. I understand that you will direct service of the Complaint documents to the Montana Attorney General.

Based on our conversation I understand the Plaintiffs are not currently claiming leakage from the pond located on the far side of the abandoned railroad embankment abutting their property. Plaintiffs are seeking to "abate" conditions that existed last year and over the years.

The position of the Department is that last summer the pond was engineered and reconstructed and is unlikely to be the source of water leakage into Plaintiff's property. Based on conversations with my client, I understand that recently Department personnel visited the site and concluded that the pond was functioning as designed. It seems that there is no longer a condition for the Department to abate, and that Plaintiff's claims may not be cognizable as injunctive or equitable relief against the Department. As you know Montana statutes provide specific procedures for making a claim of damages against the state.

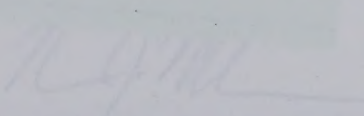
If I can be of further assistance regarding this matter, you are welcome to contact me at the points of contact listed below.

Sincerely,



Dana David
Special Assistant Attorney General
MTDEQ
direct: 406-444-2626
fax: 406-444-4386
email: ddavid@mt.gov

Copies: Rick Thompson—DEQ-WUT-SW



Norman J. Mullen
Attorney for Department
406-444-2661 voice; 444-4386 fax
nmullen@mt.gov email

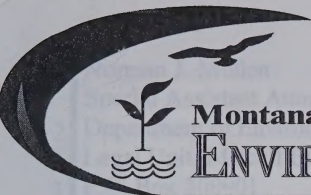
Mary 6/1

Bruce ~~BB~~ 6-2-11

Tim ~~SH~~ 6/1/11

Martini MVP 6/1/11

to file _____



Montana Department of
ENVIRONMENTAL QUALITY

Brian Schweitzer, Governor
Richard H. Opper, Director

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

May 19, 2011

RECEIVED

MAY 23 2011

Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau

Phyllis D. Smith
Clerk of 10th Judicial District
PO Box 1074
Lewistown MT 59457-1074

**Re: Motion & Brief for Post-Judgment Relief to Enter Landfill to Reconstruct Pond in
DEQ v. Marvin and Sandy Mintyala, Fergus County District Court Case DV 2000-146**

Dear Ms. Smith or Clerk's staff:

I am enclosing, for the case referred to above, an original and a copied first page of the Motion and Brief referred to above, the original and two copies of a proposed order, two self-addressed, stamped envelopes (SASEs), and one stamped envelope addressed to the Mintyalas.

Please date-stamp the copied first page and send it back to me in the SASE.

If the court enters the order, please send copies to the parties in the envelope provided.

Thank you for your assistance. Please contact me if there are any problems with my request or if you have any questions.

Sincerely,

Norman J. Mullen
Attorney for Department
406-444-4961 voice; 444-4386 fax
nmullen@mt.gov email

encls.

c. DEQ- ENF, WUTMB-SW, chron

1 Norman J. Mullen
Special Assistant Attorney General
2 Department of Environmental Quality
Legal Unit, Metcalf Building
3 P.O. Box 200901
Helena, Montana 59620-0901
4 Telephone: (406) 444-4961

5 Attorney for Department

RECEIVED

MAY 23 2011

DEPT. OF ENVIRO. QUALITY
WASTE & UNDERGROUND TANK
MANAGEMENT BUREAU

6
7
8 **MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY**

9 STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
10 QUALITY,

11 Plaintiff,

12 vs.

13 MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
14 directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
15 MISTER "M" DISPOSAL INC., et al,

16 Defendants.

Case No.: DV-2000-146

**MOTION & BRIEF FOR POST-
JUDGMENT RELIEF TO ENTER
LANDFILL TO RECONSTRUCT
STORM WATER POND AND
RECONTOUR POND DRAINAGE**

17
18 The Montana Department of Environmental Quality (Department) hereby moves,
19 pursuant to the Judgment in this case and to correct and prevent violations of the Montana Water
20 Quality Act, for an order authorizing it and its contracted engineer and project contractor to
21 enter, and requiring the Mintyals to allow entry to, the former Mister M landfill property
22 (Landfill) to reconstruct and recontour the storm water detention and drainage system at the
23 Landfill to correct problems and allow it to function properly. Currently, it is not draining
24 //

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Department of Environmental Quality
 1000 North 17th Avenue
 P.O. Box 200861
 Helena, Montana 59620-0861
 Telephone: (406) 444-4001

RECEIVED

MAY 2 2 2011

BEST OF ENVIRONMENTAL QUALITY
 WASTE & UNDERGROUND WATER
 MANAGEMENT BUREAU

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

Case No. CV-2009-148

WITHIN A BRIEF FOR POST-
 JUDGMENT RELIEF TO ENTER
 JUDGMENT TO RECONSTRUCT
 STORM WATER POND AND
 RECONSTRUCT POND DRAINAGE

STATE OF MONTANA vs. et al.
 DEPARTMENT OF ENVIRONMENTAL
 QUALITY

MARVIN MINTY vs. et al.
 MINTY vs. et al. as intervenors and as defendants
 Intervenor and defendant's motion for
 summary judgment and for dismissal of
 plaintiff's complaint

The following deposition is the sworn statement of Marvin Minty, who was
 interviewed in the highest in the case and to conduct and review activities of the Montana State
 Department of Environmental Quality and the defendant's motion for summary judgment and for
 dismissal of the plaintiff's motion for summary judgment and for dismissal of the plaintiff's
 motion and regarding the activities of the defendant in the former Marvin M. Minty property
 and regarding the activities of the defendant in the former Marvin M. Minty property
 and regarding the activities of the defendant in the former Marvin M. Minty property
 and regarding the activities of the defendant in the former Marvin M. Minty property

properly, and may be illegally discharging sediment to a coulee. It is also leaking water that is permeating a railroad embankment and possibly then leaking into a neighbor's basement.

The project would consist first of a walk-through at the property by the Department, its contract engineer, and potential bidders on one day in June or early July 2011. After the contract is awarded, the Department, engineer, and successful bidder will need to enter the Landfill for a minimum of three weeks during July and August 2011 to conduct the necessary work.

The Department submits the following brief in support of this motion.

BRIEF

BACKGROUND:

The Department filed this action in 2000 to require Defendants Mister M Disposal Inc. and Marvin and Sandy Mintyala (Defendants) to conduct post-closure care at their Mister M Landfill east of Lewistown (Landfill), located at 7 & 9 Boyd Creek Rd., in Fergus County, Montana (the Property) as required by Montana's solid waste laws and implementing administrative rules. Defendants failed to answer or otherwise appear, and the Clerk of Court entered default. After a hearing, this Court entered default judgment against Defendants on September 13, 2002.

The Default Judgment, at p. 14, ¶ 7, authorized the Department to direct the trustee of the post-closure financial assurance trust fund established for the Landfill to spend trust money to pay for the costs of post-closure care, which includes maintaining and repairing systems at the landfill so they do not violate water quality requirements or harm adjacent landowners. In the Default Judgment, at p. 16, ¶ 12, this Court retained jurisdiction to enforce the Default Judgment and Montana law and rules until the end of the 30-year post-closure care period.

property, and may be illegally discharging effluent to a waterway. It is also leaking water from its
 basement. A natural waterway and possibly also leaking into a neighbor's basement.
 The project would consist first of a wall-through at the property by the Department, the
 contract engineer, and potential bidders on or before July 2011. After the contract
 is awarded, the Department, engineer, and potential bidders will need to enter the Landfill for a
 minimum of 1000 hours during July and August 2011 to conduct the necessary work.
 The Department submits the following brief in support of this motion.

BRIEF

BACKGROUND

The Department filed this motion in 2010 to require Defendants Master M Disposal Inc.
 and Master and Mary Margaret (Defendants) to conduct post-closure care at their Master M
 Landfill and to require a landfill located at 7500 Road Creek Rd., in Eugene County,
 Georgia (the property) to comply with Georgia's solid waste laws and implementing
 administrative rules. Defendants failed to answer or otherwise appear, and the Clerk of Court
 entered default judgment against Defendants on September 17, 2010.
 The default judgment, at p. 14-5, authorized the Department to direct the trustee of the
 post-closure financial assurance trust fund established for the Landfill to spend that money to
 pay for the costs of post-closure care, which include monitoring and reporting systems at the
 Landfill as long as they do not violate water quality requirements or harm adjacent landowners. In the
 default judgment at p. 16-7, the Court entered an injunction to enforce the default judgment
 and Georgia law and rules until the end of the 30-year post-closure care period.

1 The Mintyalas have not reported that they have conducted any post-closure care at
2 the landfill since 2000, and because ground water monitoring and inspections needed to
3 be conducted, the Department has used the trust fund to pay for some work to be done,
4 and has assigned staff to undertake some post-closure care work, also. See Status Report
5 on Well Drilling and Abandonment Project filed in this case on January 21, 2011.

6 At the Mister M Landfill, the Mintyalas had a storm water control system
7 constructed. It consists of an upper storm water detention pond, a culvert that drains to a
8 lower pond, and then drainage from the lower pond to a natural coulee that leads to a
9 ditch along the north side of Highway 87 and then through culverts south under the
10 highway to Boyd Creek. Affidavit of Department Hydrogeologist Martin Van Oort (Van
11 Oort Affidavit), Exhibit 1, at ¶ 8.

12 In response to concerns raised by a neighbor to the Landfill that the upper pond
13 was leaking water into her house, the Department has investigated and also hired an
14 engineer to investigate and prepare recommendations. Van Oort Affidavit), Exhibit 1, at
15 ¶ 13.

16 The Department has concluded, based partly on the engineer's investigation, that the
17 pond was leaking water into a railroad embankment, and concluded that the water in the railroad
18 embankment may be seeping into the house. The Department is also concerned that the storm
19 water detention pond and drainage system are not functioning properly to keep sediment out of
20 state waters when a large rainstorm occurs. Currently, the upper storm water detention pond is
21 holding too much water without draining. The culvert that allows water in it to drain to the
22 lower pond has been damaged, so that there is no way for it to drain to the lower pond and then
23 to the coulee that provides natural drainage from the lower pond. Van Oort Affidavit, Exhibit 1,
24 at ¶¶ 9-12.

1 The Minnesota have not reported that they have contacted any post closure care at
2 the landfill since 2000, and because ground water monitoring and investigations needed to
3 be conducted, the Department has asked the land back to pay for some work to be done.
4 and has assigned staff to undertake some post-closure care work after the State Report
5 on Well Drilling and Remediation Project filed in this case on January 21, 2011.
6 At the March 24, 2010, the Minnesota had a water control system
7 constructed. It consists of an upper storm water detention pond, a culvert that drains to a
8 lower pond, and then drainage from the lower pond to a natural creek that leads to a
9 ditch along the north side of Highway 87 and then through culverts south under the
10 highway to Road Creek. Affidavit of Department Hydrologist Martin Van Oort Exhibit 1 at
11 Oort Affidavit Exhibit 1 at 7-8.
12 In response to concerns raised by a neighbor to the landfill that the upper pond
13 was leaking water into his house, the Department has investigated and also hired an
14 engineer to investigate and provide recommendations. Van Oort Affidavit Exhibit 1 at
15 7-8.
16 The Department has contacted expert parties on the engineer's investigation that the
17 pond was leaking water into a railroad embankment and concluded that the water in the railroad
18 embankment was seeping into the house. The Department is also concerned that the storm
19 water detention pond and drainage system has not functioning properly to keep sediment out of
20 state waters when a large rainstorm occurs. Currently, the upper storm water detention pond is
21 holding too much water without draining. The culverts that allow water in it to drain to the
22 lower pond have been damaged so that there is no way for it to drain to the lower pond and then
23 to the creek that provides natural drainage from the lower pond. Van Oort Affidavit Exhibit 1
24 at 7-8.

1 Too much water in the upper pond is also causing seepage of storm water into the
2 permeable railroad embankment uphill of the neighbor's home, which may be causing seepage
3 into the home's basement.

4 Because it is holding too much water, there is a risk that when a 25-year, 24-hour storm
5 (the storm for which a storm water control system must be designed, as set forth below) strikes
6 and sends runoff into the upper pond, it will fill even more, and water will spill over the top of
7 the soil dam of the pond. This could cause the dam to be severely eroded and breached, resulting
8 in sediment being flushed out of the pond by rushing water, through the lower pond, and into the
9 adjacent coulee. Exhibit 1 at ¶¶ 9-11.

10 Inadequate maintenance of the upper pond has resulted in sediment building up in it,
11 decreasing its storage capacity and providing habitat for willows to sprout and grow. Willow
12 roots have penetrated the pond's liner, creating a pathway for water to enter the ground below
13 the pond. In addition, freeze-thaw activity and drying have caused cracking in the liner, further
14 allowing seepage to the railroad embankment and possibly the neighbor's home. Exhibit 1 at ¶
15 12.

16 To address these issues, the engineer recommended, and the Department approved, an
17 alternative in which an outflow from the pond and a drainage system would be constructed. That
18 would maintain the pond at the level necessary to allow it to receive the storm water from a 25-
19 year, 24-hour storm and allow the sediment to settle in the pond before the water drains away.
20 During construction, if determined feasible by the Department and project engineer, the pond's
21 capacity may be increased by removing some of the sediment in it. Exhibit 1 at ¶ 13.

22 If the project is constructed, when water from the upper pond drains through the outflow,
23 the water level in the pond will be lowered, and the water pressure on the pond's soil liner will
24 be reduced. Also, the pond level should drop below the level of the willows that are growing in

1 Too much water in the upper pond is also causing seepage of storm water into the
2 permeable fill material embankment upland of the neighbor's house, which may be causing seepage
3 into the house's basement.
4 Because it is unlikely too much water there is a risk that when a 25-year, 24-hour storm
5 the storm for which a storm water control system must be designed as per (forth below) strikes
6 and water runoff into the upper pond, it will fill even more, and water will spill over the top of
7 the soil dam of the pond. This could cause the dam to be severely eroded and breached, resulting
8 in sediment being flushed out of the pond by rushing water, through the lower pond, and into the
9 adjacent road. Exhibit 1 at 77-9-11.
10 Independent maintenance of the upper pond has resulted in sediment building up in it,
11 decreasing its storage capacity and providing habitat for willows to spread and grow. Willows
12 roots have penetrated the pond's liner, creating a pathway for water to enter the ground below
13 the pond. In addition, before their activity and diving have caused cracking in the liner, further
14 allowing seepage to the adjacent embankment and possibly the neighbor's house. Exhibit 1 at 7
15 12.
16 To address these issues, the engineer has recommended, and the Department approved, as
17 alternative in which an outflow from the pond and a drainage system would be constructed. This
18 would maintain the pond at the level necessary to allow it to receive the storm water from a 25-
19 year, 24-hour storm and allow the sediment to settle in the pond before the water drains away.
20 During construction, it is anticipated that the Department will project engineer the pond's
21 capacity may be increased by removing some of the sediment in it. Exhibit 1 at 7-13.
22 If the project is constructed, when water from the upper pond drains through the outflow,
23 the water level in the pond will be lowered, and the water pressure on the pond's soil liner will
24 be reduced. Also, the pond level should drop below the level of the willows that are growing in

1 the liner. Both of these should reduce seepage into the adjacent railroad embankment. Exhibit 1
2 at ¶ 14.

3 The Department and the engineer have entered into a contract for the engineer to
4 complete the design and oversee the bidding and construction of the project. They believe that
5 the project will take about three weeks if weather cooperates. They wish to conduct the project
6 in the normal dry season, in July and August, of 2011. Once the engineer has prepared the bid
7 documents for the construction of the remedy and sent them to potential bidders, the engineer,
8 bidders, and Department will need to enter the property for a walk-through. This should take
9 place on one day several weeks before the work under the contract starts. Once the contract is
10 awarded, access will be needed for at least three weeks for the construction to take place.

11 Exhibit 1 at ¶ 16.

12 If wet weather makes the ground impassable to heavy equipment, or if other unexpected
13 problems occur, and more than three weeks is needed to complete the project, additional time or
14 entry might be needed. Exhibit 1 at ¶ 17.

15 The Mintyalas have not taken any action during the post- closure care period to correct
16 this or other maintenance problems at the Mister M Class II landfill. The Department notified
17 the Mintyalas of these problems in an Inspection Report and letter dated January 21, 2008
18 (attached here as Exhibit 2). The Department also sent the Mintyalas a letter on January 6, 2011
19 (attached as Exhibit 3) , asking them for their consent for the Department to enter the Landfill
20 property to conduct this storm water systems remedy. That letter notified them that the
21 Department would file this motion if they did not respond. The Mintyalas have not responded.
22 Exhibit 1 at ¶ 15.

23 //

24 //

1 **SUMMARY OF ARGUMENT:**

2 The Mintyalas have not inspected their landfill or reported to the Department on the
3 condition of the storm water control system. The Department and its engineer have investigated
4 and concluded that reconstruction of the upper pond and recontouring of the drainage are
5 necessary to prevent sediment from contaminating waters of the state, and to prevent water from
6 the pond from seeping into the railroad embankment, and possibly into the neighbor's house.
7 They need to bid out the project, which requires a one-day bidders' walkthrough and then at least
8 three weeks of work at the Landfill. The Department has requested the Mintyalas' permission to
9 enter, and has not received a response. The Department needs an order authorizing it and its
10 contractors to enter to conduct the project, and requiring the Mintyalas to allow the entry.

11
12 **ARGUMENT:**

13 Current Concerns- Sediment Discharged to State Waters, Pond Leaking to Embankment
14 and Possibly Neighbor's House:

15 Montana's solid waste administrative rules, specifically ARM 17.50.1404(8), require a
16 landfill owner or operator to annually inspect and report on the conditions at a landfill, and to
17 comply with post-closure care requirements at a landfill determined by the Department to be
18 necessary to protect health or the environment:

19 During the post-closure care period the owner or operator of a facility containing
20 a Class II or Class IV landfill unit shall:

- 21 ...
(c) annually inspect and submit to the department a report on the condition of all
22 landfill systems; and
(d) comply with any other post-closure care requirements determined by the
23 department to be necessary to protect human health or the environment.

24 Although required by this Court's order to comply with Montana law and rule, the
Mintyalas have not inspected or reported on their Class II landfill as required. The

1 Department has continued to inspect, and has hired an engineer to make
2 recommendations to address the problems with the Landfill storm water control system.

3 A landfill such as the Mister M Landfill is required by ARM 17.50.1109(1)(a) to
4 have a storm water control system. That system must detain the water from the largest
5 storm expected to occur each 25 years in a 24-hour period, or a 25/24 storm. After it
6 detains the water from a storm, and causes the sediment in the water to settle, it must
7 release the water slowly so as not to release the sediment.

8 Water in a coulee is a state water. § 75-5-103(33)(a), MCA . The Montana Water
9 Quality Act prohibits the discharge of sediment into state waters, because sediment is included in
10 the definition of “other wastes” in § 75-5-103(23), MCA, and § 75-5-605(2)(c), MCA, prohibits
11 the discharge of other wastes into state waters.

12 Because the Landfill’s storm water control system is not functioning properly, it may be
13 discharging sediment into state waters, in violation of the Water Quality Act. It may also be
14 allowing seepage of water into the railroad embankment, and that water may then be leaking into
15 the neighbor’s home.

16 The Department believes that it is appropriate for this Court to enforce the Default
17 Judgment and requirements of Montana law and rule by authorizing the Department and its
18 employees and contractors to enter the Landfill property to reconstruct the storm water pond and
19 to recontour the drainage system. This would likely prevent waters of the state in the coulee
20 from being contaminated by sediment, and could also prevent the seepage of water into the
21 neighbor’s home.

22 As noted above, the Department intends to direct the trustee of the Mister M Landfill’s
23 trust to pay for this work.

24 //

1 The Department requests that its employees, the engineer, and potential bidders be
2 allowed to enter the Landfill, and that the Mintyalas be required to allow that entry, for the bid
3 walk-through in June or July 2011, and that the Department's employees, engineer, and
4 successful bidder be allowed to enter, and that the Mintyalas be required to allow that entry, for
5 three weeks during July and August to construct the storm water system repair project described
6 above. The Department proposes that the order include a requirement that it notify the Mintyalas
7 by mail five days before both the walk-through and the start of construction.

8 The Department further requests that it be required to give the Mintyalas and this Court
9 notice if additional time is needed. This would allow the Mintyalas to object to additional time
10 for entry. However, the Department requests that, unless the court orders otherwise, it and the
11 engineer and contractor, and their agents, be authorized to enter during July and August 2011 for
12 the period needed to complete this project.

13
14 **CONCLUSION:**

15 Because the upper storm water detention pond may be discharging sediment into waters
16 of the state, violating the Water Quality Act, and because it may be seeping into the adjoining
17 landowner's home, the Department wishes to spend money from the Mister M post-closure care
18 trust to reconstruct it and recontour the drainage so it does discharge sediment into state waters
19 and does not seep into the home. The Mintyalas are not maintaining their landfill property, and
20 did not respond to the Department's requests for them to act or to consent to the Department's
21 entry. Therefore, it is equitable and appropriate to authorize the Department and its engineer and
22 bidders/contractor to enter, first for a one-day walk-through and then for three weeks to conduct
23 the work. It is also equitable and appropriate to require the Mintyalas to allow the entry. The
24

1 Department proposes to give five days' advance notice of the entries, and also to give notice if
2 additional time is needed.

3 If this court authorizes the entry, the Department will direct the trustee of the Landfill
4 financial assurance trust to pay for the work.

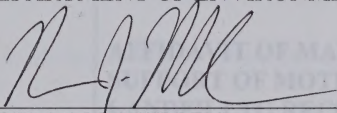
5
6 WHEREFORE, the Department requests that this Court enter appropriate Orders
7 allowing it and its contractors and agents to enter, and requiring the Mintyals to allow the entry.
8 A proposed Order is enclosed.

9 Respectfully submitted,

10 STATE OF MONTANA
11 DEPARTMENT OF ENVIRONMENTAL QUALITY

12 May 19, 2011

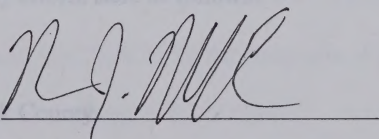
13 By:

14 
15 NORMAN J. MULLEN
16 Special Assistant Attorney General

17 **CERTIFICATE OF SERVICE**

18 The undersigned hereby certifies that a true and correct copy of the foregoing Motion and
19 Brief for Post-Judgment Relief to Enter Landfill to Reconstruct Pond and Recontour Drainage
20 was sent on May 19, 2011, via U.S. Mail, postage pre-paid, to the defendants, addressed as
21 follows:

22 Marvin Mintyala
23 Sandy Mintyala
24 1265 Elm Street #34
Clarkston WA 99403-2374



Norman J. Mullen
Special Assistant Attorney General
Department of Environmental Quality
Legal Unit, Metcalf Building
P.O. Box 200901
Helena, Montana 59620-0901
Telephone: (406) 444-4961

Attorney for Plaintiff

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC., et al,

Defendants.

Case No.: DV-2000-146

**AFFIDAVIT OF MARTIN VAN OORT IN
SUPPORT OF MOTION TO ENTER
LANDFILL TO RECONSTRUCT POND
AND RECOUNTOUR DRAINAGE**

I, Martin Van Oort, being duly sworn, state as follows:

1. I am over 18 years of age.

2. I reside in Lewis and Clark County.

3. I am a Department employee who is responsible for reviewing this project and for helping to develop a remedy to correct potential storm water and seepage problems at the Mister M Landfill.

4. I have worked for the Department as a Hydrogeologist in the Solid Waste Section for 2 ½ years.

1 5. My education, training, and experience relevant to this matter are as follows: I have
2 received the degrees of Bachelor of Science and Master of Science in Geology. These degrees
3 included coursework in surface water flow processes and the processes and mechanisms
4 involved in infiltration of surface water through earthen materials. The emphasis of my Masters
5 degree was in Hydrogeology, which deals with the occurrence and movement of water in the
6 subsurface, including seepage in the unsaturated zone. I have worked as a Hydrogeologist for
7 over 5 years on many projects involving surface water and groundwater interaction.

8 6. I have inspected the Landfill for compliance with the solid waste laws and rules
9 generally, and for compliance with storm water requirements specifically. My inspections and
10 familiarity with the Landfill site, my review of the Department's files, and my knowledge and
11 experience with Landfill regulatory requirements, lead me to the following observations and
12 conclusions.

13 7. A storm water system at a landfill such as the Mister M Landfill is required by
14 ARM 17.50.1109(1)(a) to detain the water from the largest storm expected to occur each
15 25 years in a 24-hour period, or a 25/24 storm.

16 8. The storm water control system at the Landfill consists of an upper storm
17 water detention pond, a culvert that drains to a lower pond, and then drainage from the
18 lower pond to a natural coulee that leads to a ditch along the north side of Highway 87
19 and then through culverts south under the highway to Boyd Creek.

20 9. Currently, the upper storm water detention pond is holding too much water without
21 draining. The culvert that was installed to allow it to drain to the lower pond has been damaged,
22 so that there is no way for it to drain to the lower pond.

23 10. Because the upper pond is holding too much water, there is a risk that when a 25/24
24 storm strikes and sends runoff into the pond, it will fill even more, and water will spill over the

1 top of the soil dam of the pond. This could cause the dam to be severely eroded and breached,
2 resulting in sediment being flushed out of the pond by rushing water into the adjacent coulee.

3 11. Too much water in the upper pond is also causing seepage of storm water into the
4 permeable railroad embankment uphill of a neighbor's home, which may be causing seepage into
5 the neighbor's yard and the basement of that home.

6 12. Inadequate maintenance of the upper pond has resulted in sediment building up in the
7 pond, decreasing its storage capacity and providing habitat for willows to sprout and grow.
8 Willow roots have penetrated the pond's liner, creating a pathway for water to enter the ground
9 below the pond. In addition, freeze-thaw activity and drying have caused cracking in the liner,
10 further allowing seepage out of the pond.

11 13. So, to address the potential contamination of state water by sediment, and to
12 investigate and address the neighbor's concern about seepage out of the pond, the Department
13 contracted with Great West Engineering to evaluate alternatives that would allow for proper
14 management of the storm water at the Landfill. The engineer recommended, and the Department
15 approved, an alternative in which an outflow from the pond and a drainage system would be
16 constructed. That would maintain the pond at the level necessary to allow it to receive the storm
17 water from a 25/24 storm and allow the sediment to settle in the pond before the water drains
18 away. During construction, if determined feasible by the Department and project engineer, the
19 pond's capacity may be increased by removing some of the sediment in it.

20 14. If the project is constructed, as water from the pond drains through the outflow, the
21 water level in the pond will be lowered, and the water pressure on the pond's soil liner will be
22 reduced. Also, the pond level will remain below the level of the willows that are growing in the
23 liner. Both of these should reduce seepage into the adjacent railroad embankment.

24

1 15. The Mintyalas have not taken any action during the post-closure care period to complete
2 correct this or other maintenance problems at the Mr. M Class II landfill. The Department
3 notified the Mintyalas of these problems in an Inspection Report and letter dated January 21,
4 2008, attached to the Motion for Entry as Exhibit 2. The Department also sent the Mintyalas a
5 letter on January 6, 2011, attached as Exhibit 3, asking them for their consent for the Department
6 to enter the Landfill property to conduct this storm water systems remedy. That letter notified
7 them that the Department would file this motion if they did not respond. The Mintyalas have not
8 responded.

9 16. In preparation for this project, the Department has signed a contract with Great West
10 Engineering to design the project and oversee the bid solicitation process. See contract, attached
11 as Exhibit 4. The Department and the engineer believe that the project will take about three
12 weeks if weather cooperates. They have selected the normal dry season, in July and August, of
13 2011, to conduct this project. Once the engineer has prepared the bid documents for the
14 construction of the remedy and sent them to potential bidders, the engineer, bidders, and
15 Department will need to enter the property for a walk-through. This would take place several
16 weeks before the work under the contract starts, and would be completed in one day. Then,
17 access will be needed for at least three weeks for the construction to take place. The Department
18 requests that the engineer, construction contractor, and it be allowed to enter, and that the
19 Mintyalas be required to allow that entry, for three weeks during July and August.

20 17. The Department proposes including in the order that that it will notify the Mintyalas
21 by mail five days before the walk-through and five days before construction starts. The
22 Department believes that if wet weather or some other unforeseen event occurs, more than three
23 weeks could be needed to complete the project. In that case, the Department proposes to give the
24 Mintyalas and this Court notice, but requests that unless this Court orders otherwise, it and the

MAILED

Brina Schweitzer, Governor

CERTIFIED MAIL
7005 8390 8693 7647 9168

engineer and contractor, and their agents, be allowed to enter during July and August to complete this project.

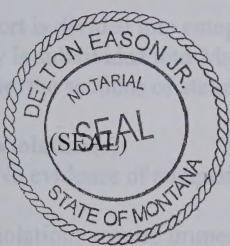
18. That completes my affidavit.

Martin Van Oort
Martin Van Oort

STATE OF MONTANA)
County of Lewis & Clark)

Subscribed and sworn to before me by Martin Van Oort this 15th day of May, 2011.

DELTON EASON JR
NOTARY PUBLIC for the State of Montana
Printed Name of Notary
Title Notary Public
Residing at Helena Montana
My commission expires: July 31, 2011





Montana Department of
ENVIRONMENTAL QUALITY

MAILED
1-18-08

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

January 21, 2008

CERTIFIED MAIL

7005 0390 0002 7647 9108

Marvin Mintyala
201 E. Lyndale, PMB - 119
Helena, MT 59601

**RE: VIOLATION LETTER—INADEQUATE POST CLOSURE CARE
Mister "M" Class II Landfill (Lic. #302)**

Dear Mr. Mintyala:

On October 18, 2007, I inspected your facility for compliance with the Montana laws and rules for solid waste disposal. According to ARM § 17.50.526(1), the operator must be notified whenever violations are observed. The Inspection Report is enclosed.

The report is divided into categories, such as General Operation and Maintenance Plan. Each category is subdivided into Major Violations, Minor Violations, and Description of Violation. In each case, the sections of statutes and rules are cited with an explanation of the specific problem.

Major Violation(s):

1. No evidence of adequate post-closure care and monitoring.

Major violations require immediate correction or the Department may take further action as needed. To achieve compliance, the facility must correct all the violations according to the specific actions and schedules provided in the Compliance Requirements section of the report.

All requested materials must be submitted within 60 days (no later than January 18, 2008).

If you have any questions or comments, please contact me at the Permitting and Compliance Division: Voice (406) 444-4725, email tstepp@mt.gov or FAX (406) 444-1374.

Sincerely,

Tim Stepp
Solid Waste Program
Waste & Underground Tank Management Bureau

Encl: Inspection Report
Cc: Ms. Josie Richards, 86099 Highway 87, Lewistown, MT 59457
Norm Mullen, DEQ Legal Unit; Mr. Dean Pomeroy, Fergus County Sanitarian
File: Lic. # 302 Fergus Co/Mister "M" Class II Landfill/Inspection.../Closure
Path: G:\WUTSWS\closure\Fergus\MrM\MrMPC-EngInspection1007.doc

EXHIBIT

SOLID WASTE MANAGEMENT SITE/SYSTEM INSPECTION REPORT

(Revision 5/04/01)

Site Name: Mr. M Class II Landfill

License #: 302

Date of Inspection: 10/18/07

Persons Present: Tim Stepp (Program engineer), Marvin Mintyala could not be reached

Applicable Acronyms

ARM = Administrative Rules of Montana

CFR = Code of Federal Regulations

Department = Montana Department Environmental Quality

MCA = Montana Code Annotated

MSWLF = Municipal Solid Waste Landfill

MSWMA = Montana Solid Waste Management Act

NESHAP = National Emission Standards for Hazardous Air Pollutants

GENERAL INSPECTION REQUIREMENTS

§ 75-10-227, MCA (MSWMA) (1) When the department believes that a violation of part 1 or this part, a violation of a rule adopted under part 1 or this part, or a violation of a permit provision has occurred, it may serve written notice of the violation on the alleged violator or his agent. The notice must specify the provision of law, rule, or permit alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order (for the complete law, please refer to the Montana Solid Waste Management Act, Title 75, chapter 10, part 2, MCA).

ARM § 17.50.525 (1) The department has authority under § 75-10-205, MCA, to conduct inspections of solid waste management systems at reasonable hours upon presentation of appropriate credentials.

ARM § 17.50.526 (1) If after an inspection the department determines that violation of the act or this subchapter is occurring, it shall notify the licensee of the nature of the violation.

(2) Depending on the severity of the violation, the department may seek a compliance schedule from the applicant or initiate proceedings to revoke the license. The department may also, through the attorney general or appropriate county attorney, seek to enjoin the licensee, or collect a criminal penalty.

(3) The department may seek a civil penalty from persons who store, treat, transport or dispose of waste in violation of this subchapter or Title 75, chapter 10, part 2, MCA.

POST-CLOSURE CARE REQUIREMENTS FOR CLASS II LANDFILLS

ARM § 17.50.531 (1) Post closure care for Class II landfills:

(a) Following closure of each Class II landfill unit, the owner or operator must conduct post-closure care. Post-closure care must be conducted for 30 years, except as provided under (b) below, and consist of at least the following:

(i) maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;

(ii) maintaining and operating the leachate collection system in accordance with the requirements in ARM 17.50.506. The department may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;

(iii) monitoring the ground water in accordance with the requirements of ARM Title 17, chapter 50, subchapter 7, and maintaining the ground water monitoring system, if applicable; and

(iv) maintaining and operating the gas monitoring system in accordance with the requirements of ARM 17.50.511.

Major Violation(s): Inadequate post-closure monitoring and care.

Description of Violation(s): You were notified on August 1, 2003, that the Department would periodically enter the facility under key held by the Solid Waste Program. The facility has been totally neglected since partial closure activities were completed on April 24, 2000. Consequently the Department has been forced to contract for monitoring and analytical services to assess the condition of ground water quality beneath the facility.

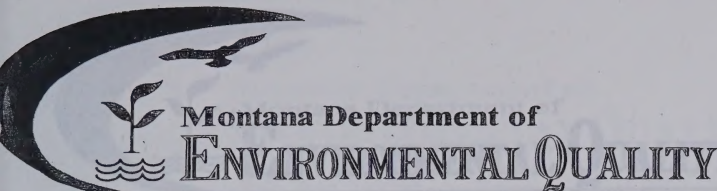
Upon responding to a complaint by the adjacent landowners below the ponds, the Department (Pat Crowley) visited the site on June 12, 2007, and determined that abnormally heavy late snows and spring runoff apparently combined to provide conditions for overflow of the on-site storm water detention ponds. The ponded and discharging waters were sampled on June 27 and 28, 2007, and Table I analyses confirmed the absence of dissolved contaminants.

Further investigation during my engineering inspection confirms that uphill erosion of clean soils east of the landfill footprint has significantly contributed to the excessive runoff from the site and loss of pond capacity. Furthermore, the overflow culvert (open elbow facing upward) has been floated causing the intake to remain elevated above water level in the upper pond so that it cannot drain to the lower pond. Much of the storm water overflow from the ponds apparently did not reach the coulee, but instead backed up west of the lower pond adjacent to the railroad grade right-of-way owned by Burlington Northern-Santa Fe. The overflow apparently infiltrated a permeable zone to seep through the embankment, resulting in discharge by seepage onto the neighbor's yard just below the railroad grade adjacent to the lower pond.

Investigation of the landfill final cover also indicates areas of inadequate final cover on portions of the slopes where waste is visible at the surface and closure has not been completed. These areas are the locus of several minor leachate seeps which are locally confined to the slopes and periodically active in the spring season.

Compliance Requirements: Until the erosion and final cover problems have been corrected, water levels in the storm water pond must be maintained as needed by irrigation of adjacent on-site grassland to provide adequate freeboard capacity for storage of all runoff. Soil and vegetation must be immediately restored where the soils are eroded east of the footprint toe and where needed elsewhere for final cover on the landfill slopes. Annual provisions for regular monitoring of final cap and vegetation integrity, storm water runoff control, ground water, and methane must also be provided in writing for approval. Such plans must be executed as necessary and sufficient reports must be submitted for approval following annual activities as required.

The storm water ponds must remain operational until the erosion and final cover problems are corrected. Any proposed modification or maintenance of the on-site systems must be submitted in writing to the Department for approval prior to implementation. Any approved on-site changes must be inspected by Department for approval upon completion.



Montana Department of
ENVIRONMENTAL QUALITY

Brian Schweitzer, Governor
Richard H. Opper, Director

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

January 6, 2011

Marvin & Sandy Mintyala
1265 Elm Street #34
Clarkston WA 99403-2374

Re: Deconstructing Storm Water Pond and Altering Associated Drainage at Mister M Landfill; DEQ v. Mintyala, Fergus County District Court Case DV 2000-146

Dear Mr. and Mrs. Mintyala:

I am writing to ask you to consent to entry onto the Mister M landfill property owned by you so that the Department and its engineer and contractors can deconstruct the storm water pond and alter the associated drainage system to prevent possible leakage from the pond into the neighboring property.

I am enclosing a memo from the Department's solid waste section supervisor, Rick Thompson, describing the need for the project.

The Department would like to conduct the project in March-April 2011 if conditions permit. If they do not, it would like to do it in July-August. The Department plans to use money from the Mr. M Landfill's trust fund to accomplish the work.

Please contact me to tell me if you consent to the entry. I have provided a signature line at the bottom of the page for you to sign to indicate your consent, an extra copy of this letter, and a self-addressed, stamped envelope for you to use to return it to me. If I have not heard from you by January 21, 2011, the Department will file a motion in the court case asking the judge to order that the access be allowed.

Sincerely,

Norman J. Mullen
Attorney for Department
406-444-4961 voice; 444-4386 fax
nmullen@mt.gov email

consent

Marvin Mintyala

date

encls.

c. DEQ- ENF, WUTMB-SW, chron

consent

Sandy Mintyala

date

EXHIBIT



Montana Department of

ENVIRONMENTAL QUALITY

MEMO

To: Norm Mullen, Staff Attorney
From: Rick Thompson, Supervisor, Solid Waste Section
Date: 1-6-2011
Subject: Mr. M Landfill, Lewistown – Site access for storm water pond/drainage repair.

As the beneficiary of the post-closure trust for the Mr. M Landfill (Landfill), and pursuant to p. 14, ¶ 7 of the Default Judgment dated September 13, 2002 in Fergus County District Court Case No. DV 200-146, the Department of Environmental Quality, acting through its Solid Waste Program (SWP), is able to direct the trustee to pay for some of the post closure care at the site. It was recently determined by a third party engineer hired by the SWP that the Landfill's storm water pond leaks during the spring months when it is at full pool. The leaky pond may then affect property owned by another person immediately adjacent and down gradient of the Landfill.

The evaluation conducted by the third party engineer recommends that the pond be repaired and that adjoining drainage features be altered to allow proper drainage. The engineer provided several alternatives for doing so. The SWP has selected an alternative that would deconstruct the pond and modify the drainage to reduce ponding and guide storm water runoff to existing natural drainage. The SWP has entered into a contract with the engineer, Great West Engineering, to design and oversee that work. Access to the Landfill is therefore needed for the engineer to oversee the bidding process for and completion of that work. Part of the oversight of the bidding process would involve conducting a walk-through at the site with potential bidders. Once the contract is awarded, access will then be needed for the contractor(s) to complete the repair of the pond and alteration of adjoining storm water drainage features impacted by the pond, and for engineering oversight and approval.

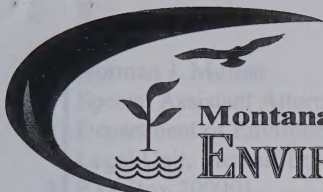
The SWP anticipates that the repair will take approximately three weeks to complete, but the timing and duration are very dependent on the weather conditions. Dry conditions, i.e., no major rain or snow events that would make access across the site to the work area difficult, or fill the pond with water, would be ideal to allow completion of the work in a timely fashion. Typically, it is fairly dry in the early spring (late March/early April) in the Lewistown area, and if access were granted, the work could be completed before the onset of the spring rains in May and June. The other option is to conduct the work in July or August, when it is typically hot and dry.

Due to the unpredictability of the weather, the SWP is requesting that the Department and its engineer and contractors be given access to the Landfill during March-April 2011 so that the work can be completed during that time if weather and conditions allow. If conditions do not allow, the Department requests that access be granted during July-August 2011.

Closed

County Jersey
Facility & # Master M
Closure Landfarm
Finan Assur Liner
GW Corr Meas Methane
GW Monitoring O & M
GW Reports Run-on
Inspections
Other: _____

County _____
Facility & # _____
Closure Landfarm
Finan Assur Liner
GW Corr Meas Methane
GW Monitoring O & M
GW Reports Run-on
Inspections
Other: _____



Montana Department of
ENVIRONMENTAL QUALITY

Brian Schweitzer, Governor
Richard H. Opper, Director

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

January 20, 2011

RECEIVED ON

JAN 21 2011

Dept. of Environmental Quality
Waste & Underground
Tank Management Bureau

Phyllis D. Smith
Clerk of 10th Judicial District
PO Box 1074
Lewistown MT 59457-1074

Re: Status Report on Well Drilling and Abandonment Project in DEQ v. Marvin and Sandy Mintyala, Fergus County District Court Case DV 2000-146

Dear Ms. Smith or Clerk's staff:

I am enclosing, for the case referred to above, an original and a copied first page of the Department's Status Report dated January 20, 2011, and a self-addressed, stamped envelope (SASE).

Please date-stamp the copied first page and send it back to me in the SASE.

Thank you for your assistance. Please contact me if there are any problems with my request or if you have any questions.

Sincerely,

Norman J. Mullen
Attorney for Department
406-444-4961 voice; 444-4386 fax
nmullen@mt.gov email

encls.

c. DEQ- ENF, **WUTMB-SW**, chron

Norman J. Mullen
Special Assistant Attorney General
Department of Environmental Quality
Legal Unit, Metcalf Building
P.O. Box 200901
Helena, Montana 59620-0901
Telephone: (406) 444-4961

Attorney for Plaintiff

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC., et al,

Defendants.

Case No.: DV-2000-146

**DEPARTMENT'S STATUS
REPORT – OCTOBER 2010
MONITORING WELL DRILLING
AND ABANDONMENT**

Plaintiff State of Montana ex rel. Department of Environmental Quality (Department)
hereby submits a status report describing the monitoring well drilling and abandonment project it
undertook pursuant to this court's order granting access on August 23, 2010.

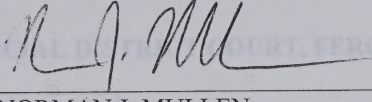
The status report consists of the following: Affidavit of Martin Van Oort, the
Department's solid waste hydrogeologist, attached as Exhibit 1, and his January 19, 2011,
summary memorandum to the Department's attorney describing the project and results, attached
as Exhibit 2. These documents show that the Department's contractor completed the monitoring

1 well drilling and abandonment project at the Mr. M Landfill in October 2010, and that the
2 Department has developed the new wells and monitored them for contaminants. Because one
3 contaminant was found above background but below groundwater protection standards, the
4 Landfill will remain in assessment monitoring status, with semi-annual sampling required.

5 Respectfully submitted on January 20, 2011.

6
7 STATE OF MONTANA
8 DEPARTMENT OF ENVIRONMENTAL QUALITY

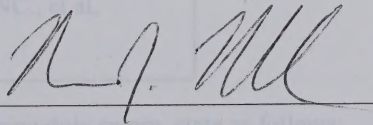
9 By

10 
11 NORMAN J. MULLEN
12 Special Assistant Attorney General
13 Attorney for Plaintiff

14 **CERTIFICATE OF SERVICE**

15 The undersigned hereby certifies that a true and correct copy of the foregoing
16 Department's Status Report - October 2010 Monitoring Well Drilling & Abandonment was sent
17 on January 20, 2011, via U.S. Mail, postage pre-paid, to the defendants, addressed as follows:

18 Marvin & Sandy Mintyala
19 1265 Elm Street #34
20 Clarkston WA 99403-2374

21 

1 Norman J. Mullen
2 Special Assistant Attorney General
3 Department of Environmental Quality
4 Legal Unit, Metcalf Building
5 P.O. Box 200901
6 Helena, Montana 59620-0901
7 Telephone: (406) 444-4961

8 Attorney for Plaintiff

9 **MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY**

10 STATE OF MONTANA ex rel.
11 DEPARTMENT OF ENVIRONMENTAL
12 QUALITY,

13 Plaintiff,

14 vs.

15 MARVIN MINTYALA and SANDY
16 MINTYALA, as individuals and as officers,
17 directors, and shareholders of Mister "M"
18 Disposal Inc., MISTER "M" DISPOSAL,
19 MISTER "M" DISPOSAL INC., et al,

20 Defendants.

Case No.: DV-2000-146

21 **AFFIDAVIT OF**
22 **MARTIN VAN OORT**
23 **SUPPORTING STATUS REPORT**
24 **ON WELL DRILLING AND**
ADANDONMENT

I, Martin Van Oort, being duly sworn, state as follows:

1. I am over 18 years of age and reside in Lewis and Clark County.

2. I am employed by the Montana Department of Environmental Quality (Department)
as a hydrogeologist in its Solid Waste Section.

3. I am making this affidavit to accompany a status report being submitted by the
Department to inform the Court and the parties of the result of well drilling and abandonment
work conducted pursuant to an access order entered by this Court on August 23, 2010.

4. I wrote the attached memorandum to Department Attorney Norm Mullen on January 19, 2011. It is based on my personal knowledge of the well drilling and abandonment project at the Mr. M Landfill, and the facts in it are true to the best of my knowledge and belief.

5. That completes my affidavit.

Martin Van Oort

Martin Van Oort

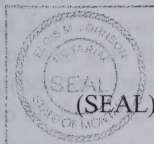
STATE OF MONTANA)

:ss

County of Lewis & Clark)

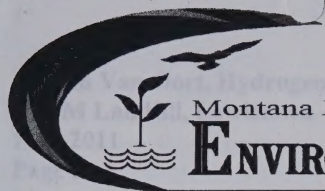
Subscribed and sworn to before me by Martin Van Oort this 20th day of January, 2011.

Elois M. Johnson



ELOIS M. JOHNSON
NOTARY PUBLIC for the
State of Montana
Residing at Townsend, Montana
My Commission Expires
November 26, 2013

NOTARY PUBLIC for the State of Montana
ELOIS M. JOHNSON
Notary's printed name



Montana Department of
ENVIRONMENTAL QUALITY

MEMO

To: Norm Mullen, Staff Attorney
From: Martin Van Oort, Hydrogeologist, Solid Waste Section
Date: 1-19-2011
Subject: Mr. M Landfill, Lewistown – Well Drilling and Abandonment Project Summary

To better define groundwater conditions and provide reliable point of compliance (POC) monitoring points at the Mr. M Landfill, two new wells were installed at the Landfill on October 12 - 14, 2010 by Central Drilling of Lewistown, Montana under a contract with DEQ. The monitoring wells were drilled and completed according to the requirements in ARM 17.50.1304. Also at that time, four wells determined to no longer be useful for monitoring were abandoned according to ARM 17.50.1312. Access for this project was undertaken pursuant to an order of the Court dated August 23, 2010 in DEQ v. Mintyala et al, Fergus County District Court Case DV 2000-146

MW-11 was located near the facility boundary south of the west detention pond to replace MW-10R, which had been damaged beyond repair in November 2009. The total depth of the boring at MW-11 was 80 feet below ground surface. The geology at this location consisted of mixed red and gray shale. Water was encountered at 75 feet below ground surface in a sandstone unit producing approximately 12 gallons per minute. The well screen was set from approximately 70 to 80 feet below ground surface.

MW-12 was located near the facility boundary down gradient from the Office Well (MW-OW), to replace that well as the point of compliance well and define the extent of the contamination detected in the former office well. The total depth of the boring at MW-11 was 105 feet below ground surface. The geology at this location consisted of mixed red and gray shale and sandy shale with some thin sandstone beds. Water was first encountered at 44 feet below ground surface in a minor sandstone unit producing approximately 1-2 gallons per minute. Drilling was continued to attempt to penetrate a more productive water bearing zone. An additional 2 gallons per minute of water was encountered in hard fractured shale at approximately 100 feet below ground surface. The well screen was set from approximately 95 to 105 feet below ground surface.

The new monitoring wells were developed on October 14 and 15, 2010 by MDEQ Solid Waste Section personnel. The wells were developed, which means prepared for use as monitoring wells, using a 12 volt submersible pump. Each well was purged at the maximum possible pumping rate and periodically surged by raising and lowering the pump. Specific Conductance and pH were measured periodically throughout development. Turbidity of the produced water was visually inspected throughout development. Development was continued at each well until field parameter readings were stable and minimal turbidity was observed following surging. A

EXHIBIT

tabbler
2

Martin Van Oort, Hydrogeologist, Solid Waste Section

Mr. M Landfill, Lewistown – Well Drilling and Abandonment Project Summary

1-19-2011

Page 2

total of approximately 350 gallons was pumped from MW-11 at an average of 2 gallons per minute on October 14, 2010. A total of approximately 230 gallons was pumped from MW-12 at an average of 1.4 gallons per minute on October 14 and 15, 2010.

Wells MW-4, MW-7R, MW-8, and MW-10R were abandoned on October 13 and 14, 2010. The wells were abandoned by removing the surface casings, pulling as much of the interior casings as possible, and filling the wells with bentonite grout.

The initial sampling at the new wells was conducted on October 26 and 27, 2010 by Solid Waste Section personnel. The new monitoring wells show general chemistry similar to the other deep wells at the Landfill, indicating that they are completed in the same deeper aquifer. The analytical results from well MW-11 show no impacts from landfill leachate. One VOC, cis-1,2-Dichloroethene, was detected at a very low level in MW-12. This detection indicates that well MW-12 is located down gradient from MW-OW in the plume of contamination. The single detection and low concentration may indicate that natural attenuation is occurring in the VOC plume between MW-OW and MW-12. Based on the detection of cis-1,2-Dichloroethene in MW-12 above background levels but below groundwater protection standards, the landfill will remain in assessment monitoring with semi-annual sampling. MW-11 and MW-12 will be the point of compliance wells for the Landfill.

A detailed project report with supporting documents consisting of about 40 pages has been placed in the Department's file for the Mr. M Landfill.

AUG 8 5 2010

DEPT OF ENVIRONMENTAL
HEALTH & SAFETY
MANAGEMENT DIVISION

Report upon the Department's August 19, 2010

10. The Court, in *State v. Landfill*, to Drill and Abandon Wells, and the Court having fully reviewed the

10. The Court

10. THE COURT FINDS that the Department has shown good cause for an Order authorizing it

10. The Court, in *State v. Landfill*, to Drill and Abandon Wells, and the Court having fully reviewed the

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Page 1

C. ENV. WWT M B SLV 8/24/10 2010

15

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County Fergus
Facility & # Master-M #302
Closure Landfarm
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GW Corr Meas Methane
GW Monitoring O & M
GW Reports Run-on
Inspections
Other: Legal

CLERK OF THE
DISTRICT COURT
PHYLLIS D. SMITH

2010 AUG 23 AM 10 34

FILED
BY *Snyder Dmey*
DEPUTY

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC., et al,

Defendants.

Case No.: DV-2000-146

**ORDER AUTHORIZING ENTRY
ON LANDFILL TO DRILL &
ABANDON WELLS**

17
RECEIVED

AUG 25 2010

DEPT. OF ENVIRO. QUALITY
WASTE & UNDERGROUND TANK
MANAGEMENT BUREAU

THIS MATTER having come before the court upon the Department's August 19, 2010
Motion to Enter Landfill to Drill and Abandon Wells, and the Court having fully reviewed this
matter,

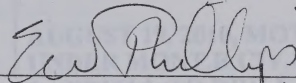
HEREBY FINDS that the Department has shown good cause for an Order authorizing it
and its contractor and their employees to enter the former Mister M Landfill at 7-9 Boyd Creek
Road east of Lewistown during October 12-19, 2010, to drill and abandon ground water
monitoring wells as described in a Motion filed March 17, 2010, and the Motion of August 19,

C: ENF, WUTMB-SLW 8/24/10 JJD

15

1 | 2010, and for an Order requiring the Mintyalas to allow the entry, and therefore CONCLUDES
2 | that it is appropriate for the Court to Order that the Department and its contractor may enter the
3 | former Mister M Landfill at 7-9 Boyd Creek Road, described as PT E2SW4, PT W2SE4, AS
4 | SHOWN ON COS 439, SEC. 8, T. 15N, R. 19E, in Fergus County, Montana, during October 12-
5 | 19, 2010, to drill and abandon ground water monitoring wells. If illness, injury, equipment
6 | failure, or weather prevent the drilling and abandonment during that period, the Department shall
7 | give notice to this Court and defendant Mintyalas, and may continue to enter until no later than
8 | November 10, 2010.

9 | DONE and DATED 8/23, 2010.

10 | 
11 | DISTRICT COURT JUDGE

12 |
13 | MARVIN MINTYALA and SANDY
14 | MINTYALA, as individuals and as officers,
15 | directors, and shareholders of Mister "M"
16 | Disposal Inc., MISTER "M" DISPOSAL
17 | INC., MISTER "M" DISPOSAL INC., et al.
18 |
19 | Defendants

20 | The Montana Department of Environmental Quality (Department) hereby moves,
21 | pursuant to MONT. C.A.P. 7-20, for an order authorizing it and its contractor to enter the former
22 | Mister M Landfill property (Landfill) for the purpose of drilling and abandoning ground water
23 | wells at the Landfill, and requiring Marvin Mintyala to allow that entry. The entry and drilling
24 | and abandonment are necessary for proper post-closure care at the landfill. Neither Mr. Mintyala
25 | nor Mister M Disposal Inc., has conducted any ground water monitoring or post-closure care at
26 | the Landfill for 12 years, despite being required to do so by administrative rules and despite
27 | being ordered to do so by this Court. The requested entry and new well drilling is necessary to

Closure

County Fergus

Facility & # Master M #302

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GW Reports

Run-on

Inspections

Other: Legal

CLERK OF THE
DISTRICT COURT
PHYLLIS D. SMITH

2010 AUG 20 AM 11 30

FILED
BY GAYLE A. DONEY
DEPUTY

RECEIVED

AUG 25 2010

DEPT. OF ENVIRO. QUALITY
WASTE & UNDERGROUND TANK
MANAGEMENT BUREAU

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC., et al,

Defendants.

Case No.: DV-2000-146

**AUGUST 19, 2010, MOTION & BRIEF
UNDER MONT.R.CIV.P. 70 TO ENTER
LANDFILL TO DRILL AND ABANDON
WELLS**

RECEIVED

AUG 24 2010

MT Dept. of Environmental Quality
Enforcement Division

The Montana Department of Environmental Quality (Department) hereby moves,
pursuant to Mont.R.Civ.P. 70, for an order authorizing it and its contractors to enter the former
Mister M landfill property (Landfill) for the purpose of drilling and abandoning ground water
wells at the Landfill, and requiring Marvin Mintyala to allow that entry. The entry and drilling
and abandonment are necessary for proper post-closure care at the landfill. Neither Mr. Mintyala
nor Mister M Disposal Inc., has conducted any ground water monitoring or post-closure care at
the Landfill for 12 years, despite being required to do so by administrative rules and despite
being ordered to do so by this Court. The requested entry and new well drilling is necessary to

C: ENF, WUTMB-SW 8/23/10 nfm

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Liner

GW Corr Meas

Methane

GW Monitoring

O & M

GW Reports

Run-on

Inspections

Other: Legal



Montana Department of
ENVIRONMENTAL QUALITY

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

August 19, 2010

Phyllis D. Smith
Clerk of 10th Judicial District
PO Box 1074
Lewistown MT 59457-1074

RECEIVED

AUG 23 2010

Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau

**Re: Department's August 19, 2010, Motion & Brief to Drill and Abandon Wells in
DEQ v. Marvin and Sandy Mintyala, DV 2000-146**

Dear Ms. Smith or Clerk's staff:

I am enclosing the following for the case referred to above:

- original and a copied first page of the Department's August 19, 2010, Motion & Brief to Drill and Abandon Wells;
- original and two copies of a proposed Order; and
- a stamped envelope addressed to the Mintyalas, and two self-addressed, stamped envelopes (SASEs).

Please date-stamp the copied first page and send it back to me in an SASE. If the Court signs the Order, please conform the copies and mail them copies to the parties in the envelopes provided.

Please bring the Motion to the attention of Judge Phillips. The Defendants have not appeared in this case, so I believe it is appropriate for the Court to review this motion without waiting for an Answer brief.

Thank you for your assistance. Please contact me if there are any problems with my request or if you have any questions.

Sincerely,

Norman J. Mullen
Attorney for Department
406-444-4961 voice; 444-4386 fax
nmullen@mt.gov email

encls.

c. DEQ- ENF, **WUTMB-SW**, chron

1 Norman J. Mullen
2 Special Assistant Attorney General
3 Department of Environmental Quality
4 Legal Unit, Metcalf Building
5 P.O. Box 200901
6 Helena, Montana 59620-0901
7 Telephone: (406) 444-4961

8 Attorney for Department

9 **MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY**

10 STATE OF MONTANA ex rel.
11 DEPARTMENT OF ENVIRONMENTAL
12 QUALITY,

13 Plaintiff,

14 vs.

15 MARVIN MINTYALA and SANDY
16 MINTYALA, as individuals and as officers,
17 directors, and shareholders of Mister "M"
18 Disposal Inc., MISTER "M" DISPOSAL,
19 MISTER "M" DISPOSAL INC., et al,

20 Defendants.

Case No.: DV-2000-146

**AUGUST 19, 2010, MOTION & BRIEF
UNDER MONT.R.CIV.P. 70 TO ENTER
LANDFILL TO DRILL AND ABANDON
WELLS**

RECEIVED

AUG 23 2010

DEPT. OF ENVIRO. QUALITY
WASTE & UNDERGROUND TANK
MANAGEMENT BUREAU

21 The Montana Department of Environmental Quality (Department) hereby moves,
22 pursuant to Mont.R.Civ.P. 70, for an order authorizing it and its contractors to enter the former
23 Mister M landfill property (Landfill) for the purpose of drilling and abandoning ground water
24 wells at the Landfill, and requiring Marvin Mintyala to allow that entry. The entry and drilling
and abandonment are necessary for proper post-closure care at the landfill. Neither Mr. Mintyala
nor Mister M Disposal Inc., has conducted any ground water monitoring or post-closure care at
the Landfill for 12 years, despite being required to do so by administrative rules and despite
being ordered to do so by this Court. The requested entry and new well drilling is necessary to

1 define the extent of the plume of contamination that is moving through the ground water away
2 from the Landfill's waste toward drinking water wells in the uppermost aquifer. The
3 abandonment is necessary to prevent contaminants from traveling between layers in the earth and
4 contaminating other layers.

5 This Court denied, on July 28, 2010, the Department's motion for extension of time to
6 enter to drill and abandon the wells. This Court stated that: "The tardiness of the State in
7 accomplishing its tasks is not acceptable. The continued intrusion on private property requires
8 greater diligence than has been shown."

9 Because the Department believes that the work requested is necessary to comply with
10 well abandonment requirements, and to conduct post-closure care at the landfill, it is making this
11 new motion. The Department believes that it has corrected the problems with the previous
12 motion, in that it is proposing a specified seven-day period for the work to be done and has
13 entered into a contract with a well driller to get the work done during that period. If mechanical
14 breakdowns, injury, illness, or weather interferes with the ability of the driller to conduct the
15 work during that seven-day period, the Department is requesting that, upon giving notice to this
16 Court and the defendants, it and the driller be authorized to enter, and that the defendants be
17 required to permit entry, for the work to be done within 30 days from the beginning of that
18 seven-day period.

20 BRIEF

21 Summary of Argument:

22 The Department needs to drill two new ground water monitoring wells and abandon four
23 wells no longer being used for monitoring to define the extent of a contamination plume
24 containing harmful chemicals at the landfill, and to prevent water migration between layers. The

1 Department has arranged with a well driller to conduct the drilling and abandonment in seven
2 days in mid-October, but requests up to 30 days if forces beyond their control interfere.

3
4 **Argument:**

5 The Department provided its reasons for the well drilling and abandonment project in
6 its motion filed on March 17, 2010, and for efficiency wishes to incorporate that motion and
7 accompanying affidavit as if set forth in full in this motion. As described in that motion,
8 monitoring of the ground water at the Mister M landfill east of Lewistown, Montana has revealed
9 the presence of chemicals that are harmful to human health. In 1998, the concentrations of two
10 of those contaminants, vinyl chloride and cis-1,2-Dichloroethene, exceeded the Maximum
11 Contaminant Level (MCL) standards set in the Montana solid waste rules at ARM
12 17.50.1307(8)(a). Vinyl chloride has continued to exceed Montana ground water quality
13 standards set under the Montana Water Quality Act to protect human health. The MCLs set in
14 the solid waste rules are taken from drinking water regulations issued by the federal
15 Environmental Protection Agency (EPA) in 40 CFR Part 141. In those drinking water
16 regulations, EPA has determined that “[s]ome people who drink water containing vinyl chloride
17 in excess of the MCL over many years may have an increased risk of getting cancer,” and that
18 “[s]ome people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over
19 many years could experience problems with their liver.” See Nos. 62 and 74, Appendix B to
20 Subpart Q of 40 Part 141--Standard Health Effects Language for Public Notification (2007). See
21 also Affidavit of Department Solid Waste hydrogeologist Martin Van Oort, Exhibit 1, at ¶ 5.

22 In its Judgment of September 13, 2002, at p. 13, ¶¶ 1-2, this Court required the Mintyals
23 to monitor the ground water at the Landfill and to submit a ground water monitoring plan and
24 update their sampling and analysis plan for the Landfill within 30 days after the entry of

1 judgment, and to sample within that 30 days and then twice per year. The Judgment at ¶ 2 also
2 required them to evaluate the monitoring results within 60 days after receiving the test results
3 and then, within 120 days, submit the evaluation and an update of their ground water
4 management plan to the Department.

5 They did not do so, and have not conducted any post-closure care at the landfill since
6 1998. See Van Oort Affidavit attached to Motion filed March 17, 2010, at ¶¶ 6-7, and his
7 affidavit attached as Exhibit 1 to this motion, at ¶ 7.

8 The Department has become concerned because three of the ground water monitoring
9 wells at the Landfill are not completed in the proper aquifer, and do not reveal whether the
10 contamination is migrating toward an aquifer. Under Montana's rules governing ground water
11 monitoring wells, such wells must be abandoned, which means sealed and closed, so that they do
12 not allow contamination to move between layers in the earth and cause contamination. See
13 ARM 17.50.1312, which sets out requirements for abandonment of monitoring wells.

14 Also, a ground water well at the Landfill has been damaged, and also needs to be
15 abandoned so as not to cause contamination of other levels.

16 Because the Department's monitoring has revealed the presence of some contaminants
17 from the Landfill in the ground water, its hydrogeologist examined the reports and the ground
18 water plan at the Landfill and determined that two additional wells are needed to define the
19 extent of the plume of contamination that is moving through the ground water away from the
20 Landfill's waste toward aquifers and drinking water wells at the "relevant point of compliance"
21 at the Landfill, which is a point in the uppermost aquifer no more than 150 meters from the waste
22 boundary. If these additional wells are not drilled, it is possible that the uppermost aquifer could
23 become contaminated and that the Department would not be aware of that contamination. This
24 aquifer is the source for drinking water for several residential properties in the area. Van Oort

1 Affidavit, Exhibit 1 to this motion, at ¶¶ 5-6. The regulatory scheme at landfills requires a
2 landfill owner to design a landfill so that it does not contaminate the uppermost aquifer in excess
3 of the landfill ground water standards; if excess levels are discovered through monitoring, the
4 owner will conduct an analysis, develop a plan, and then conduct corrective action to correct the
5 problem.

6 Because the Mintyalas and Mister M have failed in their duties to conduct post-closure
7 care at the Landfill, including ground water monitoring, and because they have failed to evaluate
8 the results and update their ground water monitoring plan, which should include the
9 abandonment of existing and the drilling of new wells when necessary, the Department wishes to
10 perform the work proposed in this motion using the money set aside for that work. This Court
11 ordered that the Department may use money provided by the defendants in a post-closure
12 financial assurance trust to conduct the post-closure care at the landfill. Default Judgment, at p.
13 14, ¶ 7.

14 As described in the attached Van Oort Affidavit, Exhibit 1, at ¶ 8 & 10, the Department
15 has contracted with a Lewistown well driller to abandon and drill the wells. To address this
16 Court's concerns about interfering with private property rights, the Department has identified a
17 specific 7-day period, October 12-18, 2010, during which it seeks to enter to conduct the work,
18 and expects to have a signed contract with the well driller to conduct the work during that 7-day
19 period. The proposed contract is attached as Exhibit 2. The driller and Mr. Van Oort believe
20 that the abandonment and drilling should take only three days to complete if all things go well.

21 Because it is possible that illness, injury, equipment problems, or weather could interfere
22 with the completion of the work in the scheduled seven days, the Department requests that it and
23 its contractor be allowed to enter for a total period of up to one month if those problems interfere
24 with the completion of the work within the seven days requested. To inform the court and the

1 defendants if any additional time is needed, the Department will file and serve notice on the
2 court and defendants if such additional time is needed, but requests the authority to enter for up
3 to a month on giving that notice.

4 The Department does not believe that the defendants' property interests should prevent
5 the Department from conducting this necessary post-closure care work. The defendants did not
6 object to the motions for entry or extension, and they have a diminished expectation of privacy in
7 a heavily-regulated landfill property. See *Balelo v. Baldrige*, 724 F.2d 753, 764 (9th Cir. Cal.
8 1984), in which the federal Ninth Circuit Court of Appeals cited a United States Supreme
9 Court decision, *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 313, 56 L. Ed. 2d 305, 98 S. Ct. 1816
10 (1978), for the proposition that "certain industries have had such a history of close governmental
11 supervision that no reasonable proprietor entering into them could have a justifiable expectation
12 of privacy." The Mister M landfill remained open after 1993, and therefore became subject to
13 the ground water monitoring and planning requirements, and to post-closure care requirements.
14 See, for ground water monitoring and planning, ARM Title 17, chapter 50, subchapter 7, and for
15 post-closure care, ARM 17.50.531 (effective through February 11, 2010). These same
16 regulatory schemes have been readopted in current rule at ARM Title 17, chapter 50, subchapter
17 13 for ground water monitoring, and in ARM 17.50.1404 for post-closure care. The Landfill's
18 owners do not have a justifiable expectation of privacy that should allow exclusion of the
19 Department from conducting post-closure care at the Landfill.

20 Indeed, they should expect that ground water monitoring and post-closure care such as
21 well drilling and abandonment would be performed at their landfill, especially when they have
22 not been conducting it themselves for 12 years.

23 //

24 //

Conclusion:

Because the defendants have not monitored ground water at the Landfill, and have not evaluated ground water problems there or updated their ground water management or sampling and analysis plans to address the problems that have been identified by the Department, the Department needs to enter onto the Mister M Landfill to abandon four wells no longer being used for ground water monitoring, and to drill two new wells needed to define the extent of the plume of contamination moving through the ground water away from the Landfill's waste toward aquifers and drinking water wells. The Department has contracted with a well driller to perform that work during October 12-18, 2010, and will limit its entry to that period unless unforeseen circumstances require a longer period of up to 30 days, in which case the Department will give notice to the Court and defendants. The defendants have not objected and do not have a justifiable expectation of privacy in a heavily regulated landfill property that should exclude the Department from entering to do the necessary work.

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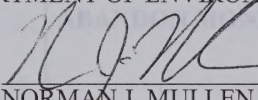
//

1 WHEREFORE, Plaintiff Montana Department of Environment moves for an order
2 authorizing it and its contractors to enter, and requiring defendants Mintyalas and Mister M
3 Disposal Inc. to allow entry, onto the Mister M Landfill property to abandon and drill ground
4 water monitoring wells as described above and in the Motion filed March 17, 2010. The entry
5 and work would be limited to October 12-18, 2010, unless additional time is required because of
6 illness, injury, equipment problems, or weather. In that case, the Department would give notice
7 that additional time, of up to 23 days, is needed, and it may then enter during that additional time
8 also.

9
10 Respectfully submitted,

11 STATE OF MONTANA
12 DEPARTMENT OF ENVIRONMENTAL QUALITY

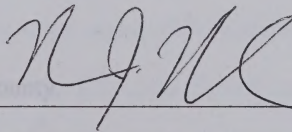
13 August 19, 2010
14 (date)

15 By: 
16 NORMAN J. MULLEN
17 Special Assistant Attorney General

18 **CERTIFICATE OF SERVICE**

19 The undersigned hereby certifies that a true and correct copy of the foregoing August 19,
20 2010, Motion & Brief to Drill and Abandon Wells was sent on August 19, 2010, via U.S. Mail,
21 postage pre-paid, to the defendants, addressed as follows:

22 Marvin Mintyala
23 Sandy Mintyala
24 1265 Elm Street #34
Clarkston WA 99403-2374



1 Norman J. Mullen
2 Special Assistant Attorney General
3 Department of Environmental Quality
4 Legal Unit, Metcalf Building
5 P.O. Box 200901
6 Helena, Montana 59620-0901
7 Telephone: (406) 444-4961

8 Attorney for Plaintiff

9 MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

10 STATE OF MONTANA ex rel.
11 DEPARTMENT OF ENVIRONMENTAL
12 QUALITY,

13 Plaintiff,

14 vs.

15 MARVIN MINTYALA and SANDY
16 MINTYALA, as individuals and as officers,
17 directors, and shareholders of Mister "M"
18 Disposal Inc., MISTER "M" DISPOSAL,
19 MISTER "M" DISPOSAL INC., et al,

20 Defendants.

Case No.: DV-2000-146

**AFFIDAVIT OF MARTIN VAN OORT IN
SUPPORT OF MOTION TO DRILL AND
ABANDON MONITORING WELLS**

21 I, Martin Van Oort, being duly sworn, state as follows:

22 1. I am over 18 years of age.

23 2. I reside in Lewis and Clark County.

24 3. In the affidavits I submitted with the Department's motion to enter to drill and
abandon wells on March 17, 2010, and for the motion for an extension of that authorization to
enter on July 1, 2010, I submitted information on my qualifications and my reasons for
requesting the entry. I will not repeat those statements here, but adopt them by reference into
this affidavit.

1 4. In my affidavit filed on March 17, 2010, I described the technical reasons that make it
2 necessary to install new ground water monitoring wells, and to abandon other wells, at the
3 former Mister M Landfill. Below I provide some additional explanation of the necessity.

4 5. The volatile organic compounds that have been detected in the former office well
5 represent a potential threat to the health of area residents who rely on domestic groundwater
6 wells for their drinking water. Vinyl Chloride has been identified by the U.S. EPA as a known
7 human carcinogen, and continues to exceed the Montana Human Health Standard for Ground
8 Water in the former office well. EPA has determined that concentrations of cis-1,2-
9 dichloroethylene in excess of the MCL may cause liver problems. See Nos. 62 and 74,
10 Appendix B to Subpart Q of 40 CFR Part 141--Standard Health Effects Language for Public
11 Notification (2007).

12 6. Without additional monitoring wells, the Department can not effectively monitor the
13 plume of contamination emanating from the landfill. The wells currently in place at the facility
14 are not located or constructed correctly to monitor the quality of groundwater in the uppermost
15 aquifer. The contaminated water could move undetected below ground, enter the water supply
16 wells of area residents, and be unknowingly consumed by those residents, causing detriment to
17 their health. The additional monitoring wells would increase the ability of the Department to
18 detect contamination before it reached any water supply wells and thus protect area residents.

19 7. The Mintyalas have performed none of the post-closure care for the facility which is
20 required by Administrative Rule of Montana 17.50.1404, and was additionally ordered by this
21 Court. During recent inspections of the facility, I have not observed any evidence that the
22 Mintyalas have used or visited the property. With the permission of the Mintyala's attorney, the
23 Department has the keys to both the front gate of the property and to the groundwater and
24 landfill gas monitoring wells, and the Department and its contractors have been conducting semi-

1 annual groundwater monitoring and quarterly methane monitoring for the facility. The
2 Department, at the expense of the state, has provided staff, including myself, to perform this
3 work free of charge to the Mintyalas. Although under the Administrative Rules of Montana
4 these tasks are the responsibility of the owner or operator of the facility and not the Department,
5 the Department has undertaken these tasks to fulfill the intent of the Montana Solid Waste Act
6 and administrative rules to protect the environment and human health when the owners of the
7 facility have failed in their duties.

8 8. As described in my affidavit filed July 1, 2010, the Department secured the services
9 of a local well drilling company to install the additional wells at the former Mister M Landfill.
10 Unforeseen delays in identifying a qualified driller, and in the contracting procedures required
11 for state contracts, combined with unusually wet weather in June 2010, prevented drilling from
12 being conducted during that month.

13 9. I visited the Mister M Landfill on June 21, 2010, to conduct methane monitoring and
14 a site inspection. While at the property, I observed muddy conditions that would not have
15 allowed the drill rig to gain access to the well locations unless it were being towed by a tracked
16 vehicle, which would have resulted in the drilling costing significantly more and which would
17 have caused undue damage to the property.

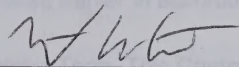
18 10. To address this Court's concerns over granting entry onto private property, I have
19 negotiated a more limited contract with the well driller. This contract provides that, should this
20 Court allow, drilling will be completed within 7 days after October 12, 2010, unless conditions
21 beyond the control of the Department and the well driller prevent the work. These conditions
22 include mechanical breakdowns, illness or injury, and adverse weather. If any of these
23 conditions occur, the contract provides that the work must then be completed within 30 days

24 //

1 after October 12, 2010. The well driller estimates the work will take approximately three days
2 on the property to complete.

3 11. To allow for this well drilling and abandonment project to move forward, I request
4 that this Court authorize the Department and its contractors to enter, and that this Court require
5 the Mintyalas to allow the entry, to perform and oversee this work from October 12, 2010
6 through October 19, 2010, or, if any of the conditions above prevent the work during the planned
7 week, through November 10, 2010.

8 12. That completes my affidavit.

9 

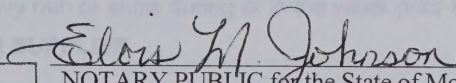
10 Martin Van Oort

11 STATE OF MONTANA)

:SS

12 County of Lewis & Clark)

13 Subscribed and sworn to before me by Martin Van Oort this 19th day of August, 2010.

14 

NOTARY PUBLIC for the State of Montana

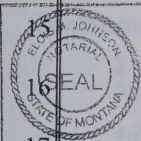
Elois M. Johnson

Printed Name of Notary

Title Paralegal

Residing at _____

My commission expires: _____



17 ELOIS M. JOHNSON
NOTARY PUBLIC for the
State of Montana
Residing at Townsend, Montana
My Commission Expires
November 26, 2013

18 (SEAL)

1. PARTIES

THIS CONTRACT, is entered into by and between the State of Montana Department of Environmental Quality, (hereinafter referred to as "the State"), and Central Drilling, Inc., (hereinafter referred to as the "Contractor"). This Contract is entered into in accordance with Title 18, Montana Code Annotated (MCA), and the Administrative Rules of Montana (ARM), Title 2, chapter 5, for the purpose of the installation of two new groundwater monitoring wells and the abandonment of four existing groundwater monitoring wells.

THE PARTIES AGREE AS FOLLOWS:

2. EFFECTIVE DATE, DURATION, AND RENEWAL

2.1. Contract Term. This Contract shall take effect on October 12, 2010, and terminate upon completion of all tasks, not to exceed 7 days after October 12, 2010 except as specified in Section 2.2, unless terminated earlier in accordance with the terms of this Contract. (§ 18-4-313 MCA.)

2.2. Extensions of Contract Term. This Contract shall be extended for a period not to exceed 30 days, if any of the conditions below occur:

2.2.1. Mechanical breakdowns of the Contractor's equipment necessary to perform any of the tasks.

2.2.2. Illness or injury of the contractor's employees necessary to perform any of the tasks, or the representative of the State.

2.2.3. Weather conditions which prevent the performance of any of the tasks, including heavy rain or snow during or in the week prior to the work.

3. SERVICES AND/OR SUPPLIES

Contractor shall:

3.1. Provide to the State the products and services, which are more fully described in Attachment A, Statement of Work, attached hereto and incorporated herein by reference.

3.2. Provide the State with an itemized billing statement submitted within 45 days of completion of work as required by Section 4.2.

3.3. Reference the Contract number on all invoices, packages, or correspondence pertaining to this Contract.

4. CONSIDERATION/PAYMENT

4.1. In consideration of services rendered pursuant to the Contract, the State shall reimburse Contractor from the Mister M Disposal Trust Account held by US Bank up to a maximum of \$22,770 for the actual, reasonable, and necessary expenditures allowed in section 4.1.1 below.

4.1.1. The allowable expense categories that may be reimbursed under this Contract for the performance of the services required are as follows (credit card receipts not acceptable):

4.1.1.1. Actual salaries, wages and benefits of Contractor personnel in performance of the services required under this Contract;

8. REQUIRED INSURANCE

8.1. General Requirements. The Contractor shall maintain, for the duration of the Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

8.2. Primary Insurance. The Contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

8.3. Specific Requirements for Commercial General Liability. The Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for: liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; and premises owned, leased, occupied, or used.

8.4. Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the State. At the request of the State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of the Contractor, the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

8.5. Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best's rating of no less than A-, indicating compliance with the required coverages, was received by the State prior to execution of this Contract. The Contractor must notify the State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

9. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Neither the Contractor nor its employees are employees of the State. Contractor and any subcontractor must comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with sections 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. This insurance or exemption must be valid for the entire term of the Contract. If the insurance or exemption used as proof of compliance expires during the term of this Contract or a renewal, Contractor shall immediately send proof of current insurance/exemption.

10. COMPLIANCE WITH LAWS

The Contractor and any subcontractor must, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with

section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Contract.

11. CONFLICT OF INTEREST

For the purposes of the Montana Code of Ethics, Contractor and each of its employees and subcontractors is a "public employee" for the purposes of this Contract. As such, Contractor and each of its employees and subcontractors is subject to the requirements of Title 2, Chapter 2, MCA, regarding conflicts of interest, including but not limited to sections 2-2-104, 2-2-105, 2-2-121, and 2-2-201, MCA.

If the State discovers that an employee of Contractor is in violation of this Section, the State may, after consulting with Contractor, terminate this Contract or take other appropriate measures to address the conflict and Contractor shall reimburse the State for any services the State requires be performed by another Contractor that duplicate the services performed by the employee who violated this Section.

12. DISCLOSURE

Contractor agrees to notify the State of any actual, apparent, or potential conflict of interest with regard to any individual working on a work assignment or having access to information regarding a subcontract. Notification of any conflict of interest shall include both organizational conflicts of interest and personal conflicts of interest (which are defined as the same types of relationships as organizational conflicts of interest, but applicable to an individual). In the event that a personal conflict of interest exists, the individual who is affected shall be disqualified from taking part in any way in the performance of the assigned work that created the conflict of interest situation.

Contractor certifies that it has identified all current employees and proposed subcontractors' employees that have worked for the State of Montana in the last two years prior to submitting the Request for Proposal which resulted in the award of this Contract. Contractor further certifies that no former employee of DEQ, the State of Montana or local government may work under this Contract for a period of twelve months after voluntary termination of public employment, if by working under the Contract the employee will take direct advantage, unavailable to others, of matters with which the employee was directly involved during the employee's public employment. A former employee of state or local government may not, within 6 months following the termination of public employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which the former public employee was directly involved during employment. Contractor further certifies it shall identify any new employees hired during this Contract that have worked for the State of Montana in the last two years prior to submitting the Request for Proposal which resulted in the award of this Contract. Disclosure in all cases shall include the name of the agency and the nature of work performed by the employee.

13. CONTRACT TERMINATION

13.1. Termination for Cause. The State may, by written notice to the Contractor, terminate this Contract in whole or in part at any time the Contractor fails to perform this Contract.

13.2. Reduction of Funding. The State must terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance in a subsequent fiscal period. (See section 18-4-313(4), MCA.)

13.3. Lack of Access. This contract will be terminated if legal access to the site for the work is not granted to the State by October 5, 2010.

14. LIAISON AND SERVICE OF NOTICES

All project management and coordination on behalf of the State shall be through a single point of contact designated as the State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed pursuant to this Contract shall be coordinated between the State's liaison and the Contractor's liaison.

Martin Van Oort will be the liaison for the State.

(Address): Montana DEQ, Solid Waste Section, P.O. Box 200901

(City, State, ZIP): Helena, MT 59620

Telephone: 406-444-2802

Cell Phone: 614-291-8916

Fax: 406-444-1374

E-mail: mvanoort@mt.gov

Mark Smith will be the liaison for the Contractor.

(Address): 969 H Street

(City, State, ZIP): Lewistown, MT 59457

Telephone: 406-538-7355

Cell Phone: 406-366-1932

E-mail: centraldrilling@gmail.com

The State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints will first be directed to the liaison.

15. MEETINGS

The Contractor is required to meet with the State's personnel, or designated representatives, to resolve technical or Contractual problems that may occur during the term of the Contract or to discuss the progress made by Contractor and the State in the performance of their respective obligations, at no additional cost to the State. Meetings will occur as problems arise and will be coordinated by the State. The Contractor will be given a minimum of three full working days' notice of meeting date, time, and location. Face-to-face meetings are desired. However, at the Contractor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings, two consecutive missed or rescheduled meetings, or failure to make a good faith effort to resolve problems may result in termination of the Contract.

16. CONTRACTOR PERFORMANCE ASSESSMENTS

The State may do assessments of the Contractor's performance. This Contract may be cancelled for one or more poor performance assessments. Contractors will have the opportunity to respond to poor performance assessments. The State will make any final decision to cancel this Contract based on the assessment and any related information, the Contractor's response and the severity of any negative performance assessment. The Contractor will be notified with a justification of Contract cancellation. Performance assessments may be considered in future solicitations.

17. CHOICE OF LAW AND VENUE

This Contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

18. SCOPE, AMENDMENT AND INTERPRETATION

18.1. Contract. This Contract consists of six numbered pages and any Attachments as required.

18.2. Entire Contract. These documents contain the entire Contract of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

19. EXECUTION

The parties through their authorized agents have executed this Contract on the dates set out below.

CENTRAL DRILLING

DATE BY: _____
MARK SMITH, Water Well Contractor
969 H Street, Lewistown. MT 59457
Federal Employer's ID No.: 81-0542118

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

DATE BY: _____
VICKI J. WOODROW, Contracts Officer
Financial Services
Metcalf Building, Room 003
1520 E. Sixth Avenue
Helena, MT 59620-0901

Approved as to Legal Content:

DATE BY: _____
DEQ Attorney

1 Hon. E. Wayne Phillips
Montana 10th Judicial District Judge
2 P.O. Box 1124
Lewistown, Montana 59457
3 Telephone: (406) 535-8028
Facsimile: (406) 535-6076
4
5
6
7

8 **MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY**

9 STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
10 QUALITY,

11 Plaintiff,

12 vs.

13 MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
14 directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
15 MISTER "M" DISPOSAL INC., et al,

16 Defendants.
17

Case No.: DV-2000-146

**ORDER AUTHORIZING ENTRY
ON LANDFILL TO DRILL &
ABANDON WELLS**

18 THIS MATTER having come before the court upon the Department's August 19, 2010
19 Motion to Enter Landfill to Drill and Abandon Wells, and the Court having fully reviewed this
20 matter,

21 HEREBY FINDS that the Department has shown good cause for an Order authorizing it
22 and its contractor and their employees to enter the former Mister M Landfill at 7-9 Boyd Creek
23 Road east of Lewistown during October 12-19, 2010, to drill and abandon ground water
24 monitoring wells as described in a Motion filed March 17, 2010, and the Motion of August 19,

1 2010, and for an Order requiring the Mintyalas to allow the entry, and therefore CONCLUDES
2 that it is appropriate for the Court to Order that the Department and its contractor may enter the
3 former Mister M Landfill at 7-9 Boyd Creek Road, described as PT E2SW4, PT W2SE4, AS
4 SHOWN ON COS 439, SEC. 8, T. 15N, R. 19E, in Fergus County, Montana, during October 12-
5 19, 2010, to drill and abandon ground water monitoring wells. If illness, injury, equipment
6 failure, or weather prevent the drilling and abandonment during that period, the Department shall
7 give notice to this Court and defendant Mintyalas, and may continue to enter until no later than
8 November 10, 2010.

9 DONE and DATED _____, 2010.

10
11 _____
DISTRICT COURT JUDGE
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23
24

Closed

County Forges

Facility & # Mister M #302

Closure

Landfarm

Finan Assur

Liner

GW Corr Meas

Methane

GW Monitoring

O & M

GW Reports

Run-on

Inspections

Other: Legal

CLERK OF THE
DISTRICT COURT
PHYLLIS D. SMITH

2010 JUL 28 AM 8 45

FILED

BY *Shirley J. Mackler*

MONTANA, TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)

NO. DV-00-146

Plaintiff,)

-VS-

ORDER DENYING MOTION
FOR EXTENSION OF TIME

MARVIN MINTYALA and SANDY)
MINTYALA, as individuals and as)
officers, directors, and shareholders of)
Mister "M" Disposal, Inc., MISTER)
"M" DISPOSAL, MISTER "M")
DISPOSAL, INC., et al.,)

Defendants.)

Originally, the State of Montana, on behalf of the Department of Environmental Quality (hereinafter referred to as the State) moved this court to allow entrance on private property of the Defendants' to drill new monitoring wells and abandon others. That motion was granted on April 13, 2010. The activities were to be completed by June 30, 2010.

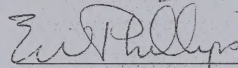
The State now moves for an extension of time. The tardiness of the State in accomplishing its tasks is not acceptable. The continued intrusion on private property requires greater diligence than has been shown.

WUTMB-SW

113

1 IT IS HEREBY ORDERED, the Motion for Extension of Time to Enter Landfill
2 to Drill and Abandon Wells is denied.

3 DATED this 28 day of July, 2010.

4
5 

6 Hon. E. Wayne Phillips
7 DISTRICT JUDGE

8 Copies to: Atty Norman J. Mullen
9 Marvin and Sandy Mintyala, *pro se*, 1265 Elm Street #34, Clarkston, WA
10 99403-2374
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Closed

County Forges

Facility & # Mister M #302

Closure Landfarm

Finan Assur Liner

GW Corr Meas Methane

GW Monitoring O & M

GW Reports Run-on

Inspections

Other: Legal

1 Norman J. Mullen
Special Assistant Attorney General
2 Department of Environmental Quality
Legal Unit, Metcalf Building
3 P.O. Box 200901
Helena, Montana 59620-0901
4 Telephone: (406) 444-4961
5 Attorney for Department

CLERK OF THE
DISTRICT COURT
PHYLLIS D. SMITH

2010 JUL 1 PM 12 51

FILED

BY **GAYLE A. DONEY**
DEPUTY

8 **MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY**

9 STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
10 QUALITY,

11 Plaintiff,

12 vs.

13 MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
14 directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
15 MISTER "M" DISPOSAL INC., et al,

16 Defendants.

Case No.: DV-2000-146

**MOTION & BRIEF UNDER
MONT.R.CIV.P. 70 FOR EXTENSION
OF TIME TO ENTER LANDFILL TO
DRILL AND ABANDON WELLS**

RECEIVED

JUL 06 2010

DEPT. OF ENVIRO. QUALITY
WASTE & UNDERGROUND TANK
MANAGEMENT BUREAU

17 The Montana Department of Environmental Quality (Department) hereby moves,
18 pursuant to Mont.R.Civ.P. 70, for an order extending the time during which it and its contractors
19 may enter the former Mister M landfill property (Landfill) for the purpose of drilling and
20 abandoning ground water wells at the Landfill. The reason for the extension is that the only
21 available well driller has a large backlog because of the weather this Spring, and was unable to
22 complete the project by the date authorized by this Court, June 30, 2010. An extension until the
23 end of September 2010 will ensure that the well driller will be able to complete the project. The
24 Department submits the following brief in support of this motion.

C: WUTMB-SW *[initials]*

Closed

County Forges

Facility & # Master M #302

Closure Landfarm

Finan Assur Liner

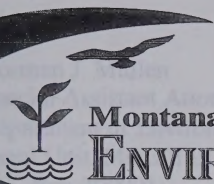
GW Corr Meas Methane

GW Monitoring O & M

GW Reports Run-on

Inspections

Other: Legal



Montana Department of
ENVIRONMENTAL QUALITY

Brian Schweitzer, Governor
Richard H. Opper, Director

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

June 29, 2010

Phyllis D. Smith
Clerk of 10th Judicial District
PO Box 1074
Lewistown MT 59457-1074

Re: Department's Motion & Brief for Order Extending Time to Drill and Abandon Wells in DEQ v. Marvin and Sandy Mintyala, DV 2000-146

Dear Ms. Smith or Clerk's staff:

I am enclosing the following for the case referred to above:

- original and a copied first page of an Motion & Brief for Extension of Time to Drill and Abandon Wells;
- original and two copies of a proposed Order; and
- a stamped envelope addressed to the Mintyalas, and two self-addressed, stamped envelopes (SASEs).

Please date-stamp the copied first page and send it back to me in an SASE. If the Court signs the Order, please conform the copies and mail them copies to the parties in the envelopes provided.

Please bring the Motion to the attention of Judge Phillips. The Defendants have not appeared in this case, so I believe it is appropriate for the Court to review this motion without waiting for an Answer brief.

Thank you for your assistance. Please contact me if there are any problems with my request or if you have any questions.

Sincerely,

Norman J. Mullen
Attorney for Department
406-444-4961 voice; 444-4386 fax
nmullen@mt.gov email

RECEIVED

JUN 30 2010

Dept. of Environ. Quality
Waste & Underground
Tank Management Bureau

encls.

c. DEQ- ENF, WUTMB-SW, chron

ENVIRONMENTAL QUALITY

Environmental Quality
Division of the Department of
Natural Resources

1000 West 10th Street, Suite 1000, Anchorage, Alaska 99501
Phone: 283-1234 Fax: 283-5678

June 28, 2010

Mr. John Smith
1000 West 10th Street, Suite 1000
Anchorage, Alaska 99501

Re: Department's Notice of Intent to Issue a Permit
for the Construction of a New Building at 1000 West 10th Street, Anchorage, Alaska 99501.

Dear Mr. Smith:

I am enclosing the following for the construction of the

new building at 1000 West 10th Street, Anchorage, Alaska 99501.

- A copy of the Department's Notice of Intent to Issue a Permit for the Construction of a New Building at 1000 West 10th Street, Anchorage, Alaska 99501.
- A copy of the Department's Notice of Intent to Issue a Permit for the Construction of a New Building at 1000 West 10th Street, Anchorage, Alaska 99501.

I am enclosing the following for the construction of the new building at 1000 West 10th Street, Anchorage, Alaska 99501.

I am enclosing the following for the construction of the new building at 1000 West 10th Street, Anchorage, Alaska 99501.

I am enclosing the following for the construction of the new building at 1000 West 10th Street, Anchorage, Alaska 99501.

Sincerely,

John Smith
1000 West 10th Street, Suite 1000
Anchorage, Alaska 99501
Phone: 283-1234 Fax: 283-5678

20

June 28, 2010

Work & Environment
Department of Natural Resources
1000 West 10th Street, Suite 1000
Anchorage, Alaska 99501
Phone: 283-1234 Fax: 283-5678

1000 West 10th Street, Suite 1000
Anchorage, Alaska 99501

1 Norman J. Mullen
Special Assistant Attorney General
2 Department of Environmental Quality
Legal Unit, Metcalf Building
3 P.O. Box 200901
Helena, Montana 59620-0901
4 Telephone: (406) 444-4961

5 Attorney for Department

6
7
8 **MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY**

9 STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
10 QUALITY,

11 Plaintiff,

12 vs.

13 MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
14 directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
15 MISTER "M" DISPOSAL INC., et al,

16 Defendants.

Case No.: DV-2000-146

**MOTION & BRIEF UNDER
MONT.R.CIV.P. 70 FOR EXTENSION
OF TIME TO ENTER LANDFILL TO
DRILL AND ABANDON WELLS**

17 The Montana Department of Environmental Quality (Department) hereby moves,
18 pursuant to Mont.R.Civ.P. 70, for an order extending the time during which it and its contractors
19 may enter the former Mister M landfill property (Landfill) for the purpose of drilling and
20 abandoning ground water wells at the Landfill. The reason for the extension is that the only
21 available well driller has a large backlog because of the weather this Spring, and was unable to
22 complete the project by the date authorized by this Court, June 30, 2010. An extension until the
23 end of September 2010 will ensure that the well driller will be able to complete the project. The
24 Department submits the following brief in support of this motion.

BRIEF

This Court entered an Order on April 13, 2010, authorizing the Department and its contractors to enter onto the Mister M Landfill east of Lewistown (Landfill) to drill and abandon ground water monitoring wells, and requiring the property owners, Marvin and Sandy Mintyala, to allow the entry. The Order allowed entry until June 30, 2010.

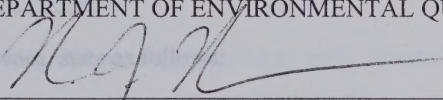
As described in the attached affidavit of Department hydrogeologist Martin Van Oort, Exhibit 2, the Department published its request for bids to well drillers on April 20, 2010, but did not receive any bids. The Department then contacted local drillers, but identified only one still in the business. It entered into a contract with that driller on June 17, but the driller has a large backlog due to its inability to drill because of the weather in the Lewistown area this Spring. The driller has told the Department that it will be able to start the project no earlier than the first week of August 2010. Therefore, the Department is requesting an extension until the end of September to allow the driller the necessary time to complete the project. See Exhibit 2 at ¶¶ 5-10.

Respectfully submitted,

STATE OF MONTANA
DEPARTMENT OF ENVIRONMENTAL QUALITY

June 29, 2010
(date)

By:


NORMAN J. MULLEN
Special Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion & Brief to Drill and Abandon Wells was sent on June 29, 2010, via U.S. Mail, postage pre-paid, to the defendants, addressed as follows:

Marvin Mintyala
Sandy Mintyala
1265 Elm Street #34
Clarkston WA 99403-2374

EXHIBIT

This (copy) contains information on April 13, 2010, submitted by the Department and its contractors to enter onto the Mount St. Helens (MSH) and Mt. Rainier (MR) to drill and abandon. The Department is currently reviewing the information and will respond to the request as soon as possible. The Order allows entry onto MSH and MR.

As discussed in the attached affidavit of Department Investigator Martin V. McGee, Exhibit 1, the Department published its request for bids to enter onto MSH and MR on April 30, 2010, but did not receive any bids. The Department then contacted local drillers, but no bids were received.

The Department is currently reviewing the information and will respond to the request as soon as possible. The Order allows entry onto MSH and MR.

The Order allows entry onto MSH and MR. The Department is currently reviewing the information and will respond to the request as soon as possible.

The Order allows entry onto MSH and MR. The Department is currently reviewing the information and will respond to the request as soon as possible.

STATE OF MONTANA
DEPARTMENT OF ENVIRONMENTAL QUALITY

KARL J. MILLER
Special Assistant Attorney General

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing is being filed with the Clerk of the District Court in and for the County of Blaine, Montana, this 1st day of May, 2010.

KARL J. MILLER
Special Assistant Attorney General
1100 E. 1st Avenue
Helena, MT 59601-1100

1 Norman J. Mullen
2 Special Assistant Attorney General
3 Department of Environmental Quality
4 Legal Unit, Metcalf Building
5 P.O. Box 200901
6 Helena, Montana 59620-0901
7 Telephone: (406) 444-4961

8 Attorney for Plaintiff

9 MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

10 STATE OF MONTANA ex rel.
11 DEPARTMENT OF ENVIRONMENTAL
12 QUALITY,

13 Plaintiff,

14 vs.

15 MARVIN MINTYALA and SANDY
16 MINTYALA, as individuals and as officers,
17 directors, and shareholders of Mister "M"
18 Disposal Inc., MISTER "M" DISPOSAL,
19 MISTER "M" DISPOSAL INC., et al,

20 Defendants.

Case No.: DV-2000-146

**AFFIDAVIT OF MARTIN VAN OORT IN
SUPPORT OF MOTION TO EXTEND
PERIOD TO DRILL AND ABANDON
MONITORING WELLS**

21 I, Martin Van Oort, being duly sworn, state as follows:

22 1. I am over 18 years of age.

23 2. I reside in Lewis and Clark County.

24 3. I described my qualifications in my affidavit that was attached to the Motion filed on
March 17, 2010. To save time and paper, I will not repeat them, but adopt them by reference.

4. The Department of Environmental Quality received authorization to enter the Mister
M property to drill and abandon wells from this Court in an Order entered on April 13, 2010.

This authorization extended from April 1, 2010 through June 30, 2010.

1 5. The Department published bid documents to drill and abandon wells at the Mister M
2 Landfill on April 20, 2010. Bids were due by close of business May 6, 2010.

3 6. On May 11, 2010, I determined that no bids had been submitted for the proposed
4 work. Upon contacting potential drillers in the area, I learned that two had ceased operations and
5 the third, Central Drilling, was unaware he was permitted to install monitoring wells.

6 7. After consulting with the Department's contracts officer, the Department determined
7 that due diligence had been done in offering the contract for competitive bid, and requested a bid
8 from Central Drilling on May 21, 2010. On May 28, 2010 the Department received the bid from
9 Central Drilling.

10 8. The Department accepted the bid from Central Drilling on June 2, 2010 and began the
11 contracting process. The Department received all required information from Central Drilling by
12 June 17, 2010. The contract was finalized on June 17, 2010 and mailed to Central Drilling for
13 signature on June 18, 2010.

14 9. Due to adverse weather conditions this spring, Central Drilling currently has a
15 significant scheduling backlog. Central Drilling estimates that it can begin drilling for the Mister
16 M project no earlier than the first week of August, 2010.

17 10. To allow for this well drilling and abandonment project to move forward, I request
18 that the authorization for the Department and its contractors to enter to perform and oversee this
19 work be extended from July 1, 2010 through September 30, 2010.

20 //

21 //

22 //

23 //

24 //

1 The Department published bid documents to drill and abandon wells in the Midland

2 County on April 20, 2010. This was the close of business May 6, 2010.

3 On May 11, 2010, I determined that no bids had been submitted for the proposed

4 work. Upon contacting potential bidders in the area, I learned that two had ceased operations and

5 the third, Central Drilling, was unsure he was permitted to install monitoring wells.

6 After consulting with the Department's contract officer, the Department determined

7 that this bid was not being offered in offering the contract for competitive bid and requested a bid

8 from Central Drilling on May 21, 2010. On May 24, 2010 the Department received the bid from

9 Central Drilling.

10 The Department accepted the bid from Central Drilling on June 2, 2010 and before the

11 contract was executed. The Department received all required information from Central Drilling by

12 June 11, 2010. The contract was executed on June 17, 2010 and printed as Central Drilling Inc.

13 Agreement on June 18, 2010.

14 I am to advise whether conditions for drilling Central Drilling currently has a

15 significant scheduling backlog. Central Drilling estimates that it can begin drilling for the project

16 at project no earlier than the first week of August 2010.

17 To allow for this well drilling and abandonment project to move forward, I request

18 that the authorization for the Department and its contractors to enter to perform and oversee this

19 work be extended from July 1, 2010 through September 30, 2010.

20

21

22

23

24

25

11. That completes my affidavit.

Martin Van Oort

Martin Van Oort

STATE OF MONTANA)

:ss

County of Lewis & Clark)

Subscribed and sworn to before me by Martin Van Oort this 29th day of June, 2010.

Elois M. Johnson

NOTARY PUBLIC for the State of Montana

Elois M. Johnson

Printed Name of Notary

Title *Paralegal*

Residing at _____

My commission expires: _____



ELOIS M. JOHNSON
NOTARY PUBLIC for the
State of Montana
Residing at Townsend, Montana
My Commission Expires
November 28, 2013

Check!

County Forges

Facility & # Master M #302

Closure

Landfarm

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GW Corr Meas

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GW Monitoring

O & M

GW Reports

Run-on

Inspections

Other: Legal

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APR 14 2010

PO Box 200901

DEPT. OF ENVIRO. QUALITY
WASTE & UNDERGROUND TANK
MANAGEMENT BUREAU

CLERK OF THE
DISTRICT COURT
PHYLLIS D. SMITH

2010 APR 13 AM 9 36

FILED
BY *Phyllis D. Smith*
~~DEPUTY~~ *clerk*

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Case No.: DV-2000-146

Plaintiff,

**ORDER AUTHORIZING ENTRY
ON LANDFILL TO DRILL &
ABANDON GROUND WATER
WELLS**

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC., et al,

Defendants.

THIS MATTER having come before the court upon the Department's Motion to Enter
Landfill to Drill & Abandon Ground Water Wells, and the Court having fully reviewed this
matter,

HEREBY FINDS that:

1. Defendants Marvin and Sandy Mintyala and Mister "M" Disposal Inc. (Defendants) did
not prepare a Sampling and Analysis Plan, and did not conduct ground water monitoring by the
deadlines set in this Court's Judgment of September 13, 2002.

2. Defendants have not performed either of those tasks as of the date of this Order.

3. it is reasonable for the Department to enter the Landfill property from April 1 through June 30, 2010, to perform ground water well drilling and abandonment as requested in the Department's motion, and it is reasonable to order the Defendants to allow the entry.

Therefore, the Court CONCLUDES that:

1. it is appropriate for this Court to appoint the Montana Department of Environmental Quality (Department) to perform those tasks at the Defendants' expense, and to order that Department employees and contractors may enter the Landfill property to perform that work.

2. it is appropriate to Order the Defendants to allow such entry by Department employees and contractors.

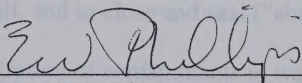
It is therefore ORDERED that:

1. the Department is appointed to drill and abandon ground water wells at the Mister M Landfill;

Department employees and contractors may, from April 1 to June 30, 2010, enter onto the Landfill property at 7-9 Boyd Creek Road, described as located at 7 & 9 Boyd Creek Rd., described as PT E2SW4, PT W2SE4, AS SHOWN ON COS 439, SEC. 8, T. 15N, R. 19E, in Fergus County, Montana, to drill and abandon ground water wells as set forth in the motion, and

3. Defendants shall allow that entry.

DONE and DATED 4/13, 2010.


DISTRICT COURT JUDGE

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County Forges

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Landfarm

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GW Monitoring

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GW Reports

Run-on

Inspections

Other:

Legal

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BY Sheila J. Machler

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MAR 22 2010

Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC., et al,

Defendants.

Case No.: DV-2000-146

**MOTION & BRIEF UNDER
MONT.R.CIV.P. 70 TO ENTER
LANDFILL TO DRILL TWO NEW
MONITORING WELLS AND TO
ABANDON FOUR WELLS**

The Montana Department of Environmental Quality (Department) hereby moves,
pursuant to Mont.R.Civ.P. 70, for an order authorizing it and its contractors to enter the former
Mister M landfill property (Landfill) owned by Defendants Marvin and Sandy Mintyala for the
purpose of drilling two new ground water monitoring wells to more accurately characterize and
assess ground water contamination at the Landfill, and to close and seal ("abandon") four ground
water wells at the Landfill to protect against migration of contaminants in water between
underground rock layers. The Department submits the following brief in support of this motion.

C:ENF, WUTMB-SW 3/19/10 JPM

Montana Department of
ENVIRONMENTAL QUALITY

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

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MAR 22 2010

Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau
Brian Schweitzer, Governor

March 16, 2010

Phyllis D. Smith
Clerk of 10th Judicial District
PO Box 1074
Lewistown MT 59457-1074

**Re: Department's Motion & Brief to Drill and Abandon Wells in Montana
Department of Environmental Quality v. Marvin and Sandy Mintyala, DV 2000-146**

Dear Ms. Smith or Clerk's staff:

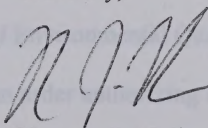
I am enclosing the following for the case referred to above:

- original and a copied first page of an Motion & Brief to Drill and Abandon Wells;
- original and two copies of a proposed Order; and
- a stamped envelope addressed to the Mintyalas, and two self-addressed, stamped envelopes (SASEs).

Please bring the Motion to the attention of Judge Phillips. Please date-stamp the copied first page and send it back to me in an SASE. If the Court signs the Order, please conform the copies and mail them copies to the parties in the envelopes provided.

Thank you for your assistance. Please contact me if there are any problems with my request or if you have any questions.

Sincerely,



Norman J. Mullen
Attorney for Department
406-444-4961 voice; 444-4386 fax
nmullen@mt.gov email

encls.

c. DEQ- ENF, WUTMB-SW, chron

RECEIVED

MAR 22 2010

Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau

Norman J. Mullen
Special Assistant Attorney General
Department of Environmental Quality
Legal Unit, Metcalf Building
P.O. Box 200901
Helena, Montana 59620-0901
Telephone: (406) 444-4961

Attorney for Department

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

vs.

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC., et al,

Defendants.

Case No.: DV-2000-146

**MOTION & BRIEF UNDER
MONT.R.CIV.P. 70 TO ENTER
LANDFILL TO DRILL TWO NEW
MONITORING WELLS AND TO
ABANDON FOUR WELLS**

The Montana Department of Environmental Quality (Department) hereby moves, pursuant to Mont.R.Civ.P. 70, for an order authorizing it and its contractors to enter the former Mister M landfill property (Landfill) owned by Defendants Marvin and Sandy Mintyala for the purpose of drilling two new ground water monitoring wells to more accurately characterize and assess ground water contamination at the Landfill, and to close and seal ("abandon") four ground water wells at the Landfill to protect against migration of contaminants in water between underground rock layers. The Department submits the following brief in support of this motion.

BRIEF

BACKGROUND:

The Department filed this action in 2000 to require Defendants Mister M Disposal Inc. and Marvin and Sandy Mintyala (Defendants) to conduct post-closure care at their Mister M Landfill east of Lewistown (Landfill), located at 7 & 9 Boyd Creek Rd., described as PT E2SW4, PT W2SE4, AS SHOWN ON COS 439, SEC. 8, T. 15N, R. 19E, in Fergus County, Montana (the Property) as required by Montana's solid waste laws and implementing administrative rules. Defendants failed to answer or otherwise appear, and the Clerk of Court entered default. After a hearing, this Court entered default judgment against Defendants on September 13, 2002.

In the Default Judgment at p. 13, ¶¶ 1 - 2, this Court required Defendants to, among other things, update the ground water sampling and analysis plan (SAP) for the Landfill within 30 days after the entry of judgment, and to conduct ground water monitoring within that same 30 days and then twice a year during the 30-year post-closure care period. The Default Judgment, at p. 14, ¶ 7, also authorized the Department to direct the trustee of the post-closure financial assurance trust fund established for the Landfill to spend trust money to pay for the costs of post-closure care, which includes updating ground water monitoring plans and conducting ground water monitoring.

This Court retained jurisdiction to enforce the Default Judgment and Montana law and rules until the end of the 30-year post-closure care period. Default Judgment, p. 16, ¶ 12.

ARGUMENT:

The Defendants have not complied with this Court's judgment concerning updates to the SAP and ground water monitoring. They have not updated the SAP, and they have not

1 conducted any ground water monitoring at the Landfill since 1999. Affidavit of Department
2 hydrogeologist Martin Van Oort, attached as Exhibit 1, at ¶¶ 6 & 7.

3 The Department's Solid Waste Section has determined that it needs to drill a new ground
4 water monitoring well at the Landfill. This determination is based on the results of ground water
5 monitoring conducted by or on behalf of the Department at the Landfill. That monitoring has
6 revealed the presence of two contaminants often associated with the breakdown of solid waste at
7 landfills, Vinyl Chloride and cis-1,2-Dichloroethene, in the ground water below the Landfill.
8 Van Oort Affidavit, Exhibit 1, at ¶¶ 8 & 9.

9 Ground water standards for landfills adopt the maximum contaminant levels (MCLs)
10 established to protect drinking water under the Montana public water supply laws and related
11 rules. See solid waste rule ARM 17.50.1307(8)(a), which refers to the MCLs. ARM
12 17.38.204(1), a public water supply rule, adopts, as Montana MCLs, the drinking water MCLs
13 set by the U.S. Environmental Protection Agency under the federal Safe Drinking Water Act at
14 40 CFR 141.61(a).

15 The concentration of Vinyl Chloride at the Landfill was measured at 4.6 $\mu\text{g/L}$ in 1998,
16 exceeding the MCL for that contaminant of 2 $\mu\text{g/L}$ (micrograms per liter). Later monitoring has
17 not revealed additional exceedances of the MCL for Vinyl Chloride. Its concentration at the
18 Landfill in October 2009 was 0.59 $\mu\text{g/L}$. Van Oort Affidavit, Exhibit 1, at ¶¶ 8 & 9.

19 In 1998, the concentration of cis-1,2-Dichloroethene (also called cis-1,2-
20 Dichloroethylene) at the Landfill was measured at 148 $\mu\text{g/L}$, which exceeded the MCL for that
21 contaminant of 70 $\mu\text{g/L}$. Its concentration at the Landfill in October 2009 was 22 $\mu\text{g/L}$. Van
22 Oort Affidavit, Exhibit 1, at ¶¶ 8 & 9.

23 Even though the concentrations of Vinyl Chloride at the Landfill have not exceeded the
24 MCL recently, they have continued to exceed Montana ground water quality standards set under

1 the Montana Water Quality Act to protect human health. See ARM 17.30.1001(2)(a), which
2 adopts by reference, as Montana ground water quality standards, Circular DEQ-7, *Montana*
3 *Numeric Water Quality Standards* (February 2008) at p. 35.

4
5 TWO NEW WELLS MUST BE DRILLED TO DETERMINE CONCENTRATION OF
6 CONTAMINANTS AT RELEVANT POINT OF COMPLIANCE, AND FOUR WELLS MUST
7 BE ABANDONED TO PROTECT AGAINST CONTAMINATION OF OTHER AQUIFERS

8 The Department conducted a field test of the former office well in June 2009. This test
9 led the Department to conclude that the well is contaminated by landfill leachate. Van Oort
10 Affidavit, Exhibit 1, at ¶ 10.

11 The Department's analysis of the contaminants and the ground water situation at the
12 Landfill has raised the concern that the existing ground water monitoring wells do not define the
13 extent of the plume of contamination that is moving through the ground water away from the
14 Landfill's waste. The Department believes that it is necessary to drill a new monitoring well to
15 define the extent of the plume of contamination. Van Oort Affidavit, Exhibit 1 at ¶¶ 12 – 21.

16 Also, because three of the existing wells were not completed in the proper aquifer to
17 reveal contamination, they are not needed as monitoring wells. Wells that are not being used
18 should be closed and sealed (abandoned) so that they do not provide a pathway for contaminants
19 to move between underground layers of rock, where they could cause contamination of water
20 that could be used for drinking. Van Oort Affidavit, Exhibit 1, at ¶ 24. See also ARM
21 17.50.1312, which sets out requirements for abandonment of monitoring wells.

22 In addition, one of the ground water monitoring wells at the Landfill has become
23 irreparably damaged, and cannot be used for monitoring. The Department believes it is
24 necessary to drill another well to substitute for that well, and to abandon that damaged well. Van
25 Oort Affidavit, Exhibit 1, at ¶ 22 & 23.

1 The Department has attached a map showing the location of the proposed new wells and
2 the wells to be abandoned. It is attached as Exhibit 2.

3 The information concerning the sampling results and the need to construct new wells and
4 abandon others is the kind of information that needs to be addressed in an SAP for the Landfill.
5 Van Oort Affidavit, Exhibit 1, at ¶ 26. As stated above, the Defendants were required to update
6 their SAP within 30 days after default judgment was entered, but have failed to do so.

7 They were also required to monitor ground water within 30 days after entry of the
8 judgment, but have failed to do that, also. Indeed, the Department does not have any indication
9 that Defendants have conducted any post-closure care activity at the Landfill. They seem to have
10 wholly shirked their duties to conduct post-closure care for the last 10 and the next 20 years.
11 Van Oort Affidavit, Exhibit 1, at ¶¶ 6 & 7.

12 In anticipation of trying to get the wells drilled and abandoned as proposed in this
13 motion, the Department wrote to the Mintyalas on August 28, 2009, asking them to allow the
14 Department and its agents to enter for that purpose. See letter, attached as Exhibit 3. They did
15 not respond. Van Oort Affidavit, Exhibit 1, at ¶ 27.

16
17 THE COURT MAY APPOINT DEPARTMENT TO DRILL AND ABANDON WELLS

18 Fortunately, Mont.R.Civ.P. 70 provides an avenue of relief. It states that, when a person
19 has not performed as required by a court order within the time set for compliance, the court may
20 appoint a third party to perform the duty at the disobedient party's expense. Rule 70 provides, in
21 relevant part:

22 If a judgment directs a party ... to perform any other specific act and the party
23 fails to comply within the time specified, the court may direct the act to be done at
24 the cost of the disobedient party by some other person appointed by the court and
the act when so done has like effect as if done by the party.

1 As noted above, the Department's administrative rules concerning solid waste, at ARM
2 17.50.540, require that a Landfill owner or operator provide financial assurance to cover the
3 costs of caring for the Landfill, including ground water planning and monitoring, during the post-
4 closure care period of 30 years. This lawsuit funneled about \$198,000 into a trust to be used for
5 that purpose. U.S. Bank is the trustee of that trust. The Department has executed against
6 personal property of the Defendants, and has placed funds received from those executions into
7 the trust. It has also regularly spent money from the trust on post-closure care at the Landfill; in
8 2009, the Department spent about \$11,700 for three ground water monitoring events, and expects
9 to spend about \$7,500 per year on two ground water monitoring events per year. About
10 \$194,000 now remains in that trust. The Department estimates that the work for which entry is
11 requested in this motion will cost about \$10,000, and has prepared contract bid documents in
12 anticipation of doing the work and obtaining authorization to enter. Exhibit 1, ¶¶ 25 & 29.

13 If this Court authorizes the entry, the Department will send the project out to bid and then
14 award the contract. The Department will then direct the trustee to spend money in the trust to
15 pay for the work. Van Oort Affidavit, Exhibit 1 at ¶ 29.

16 The Department requests an order appointing it to perform the work described in this
17 motion, and that it and its contractors be authorized to enter, and an order that Defendants allow
18 the Department to enter, the Landfill for the purposes of drilling and abandoning the wells
19 described in this motion, during April, May, and June 2010. Van Oort Affidavit, Exhibit 1, ¶¶ 25
20 & 28.

21 //

22 //

23 //

24 //

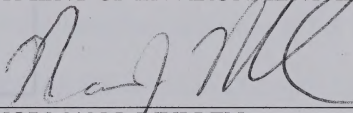
1 CONCLUSION:

2 Because the Mintyalas are disobeying this Court's judgment requiring them to update
3 their ground water monitoring plan for sampling at the Landfill, because a better-positioned and
4 constructed monitoring well is needed to intercept the plume of contamination closer to the
5 maximum distance allowed for a compliance well, because one monitoring well has been
6 damaged and needs to be abandoned and replaced, and because three other wells that are not
7 being used need to be sealed and properly abandoned to prevent migration of contamination
8 between underground rock layers, it is appropriate under Mont.R.Civ.P. 70 for this Court to
9 appoint the Department to perform that work at the Mintyalas' expense, and to authorize the
10 Department and its contractors to enter the Landfill Property to perform that work from April 1
11 through June 30, 2010. The Department will then direct the trustee of the Landfill financial
12 assurance trust to pay for the work from the trust.

13 Respectfully submitted,

14 STATE OF MONTANA
15 DEPARTMENT OF ENVIRONMENTAL QUALITY

16 March 16, 2010
17 (date)

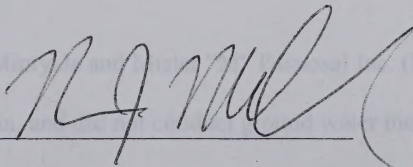
By: 

NORMAN J. MULLEN
Special Assistant Attorney General

18 **CERTIFICATE OF SERVICE**

19 The undersigned hereby certifies that a true and correct copy of the foregoing Motion &
20 Brief to Drill and Abandon Wells was sent on March 16, 2010, via U.S. Mail, postage pre-paid,
to the defendants, addressed as follows:

21 Marvin Mintyala
22 Sandy Mintyala
23 1265 Elm Street #34
24 Clarkston WA 99403-2374



1 Hon. E. Wayne Phillips
Montana 10th Judicial District Judge
2 P.O. Box 1124
Lewistown, Montana 59457
3 Telephone: (406) 535-8028
Facsimile: (406) 535-6076
4

5
6
7
8 **MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY**

9 STATE OF MONTANA ex rel.
DEPARTMENT OF ENVIRONMENTAL
10 QUALITY,

11 Plaintiff,

12 vs.

13 MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
14 directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
15 MISTER "M" DISPOSAL INC., et al,

16 Defendants.

Case No.: DV-2000-146

**ORDER AUTHORIZING ENTRY
ON LANDFILL TO DRILL &
ABANDON GROUND WATER
WELLS**

17
18 THIS MATTER having come before the court upon the Department's Motion to Enter
19 Landfill to Drill & Abandon Ground Water Wells, and the Court having fully reviewed this
20 matter,

21 **HEREBY FINDS that:**

22 1. Defendants Marvin and Sandy Mintyala and Mister "M" Disposal Inc. (Defendants) did
23 not prepare a Sampling and Analysis Plan, and did not conduct ground water monitoring by the
24 deadlines set in this Court's Judgment of September 13, 2002.

2. Defendants have not performed either of those tasks as of the date of this Order.

3. it is reasonable for the Department to enter the Landfill property from April 1 through June 30, 2010, to perform ground water well drilling and abandonment as requested in the Department's motion, and it is reasonable to order the Defendants to allow the entry.

Therefore, the Court CONCLUDES that:

1. it is appropriate for this Court to appoint the Montana Department of Environmental Quality (Department) to perform those tasks at the Defendants' expense, and to order that Department employees and contractors may enter the Landfill property to perform that work.

2. it is appropriate to Order the Defendants to allow such entry by Department employees and contractors.

It is therefore ORDERED that:

1. the Department is appointed to drill and abandon ground water wells at the Mister M Landfill;

Department employees and contractors may, from April 1 to June 30, 2010, enter onto the Landfill property at 7-9 Boyd Creek Road, described as located at 7 & 9 Boyd Creek Rd., described as PT E2SW4, PT W2SE4, AS SHOWN ON COS 439, SEC. 8, T. 15N, R. 19E, in Fergus County, Montana, to drill and abandon ground water wells as set forth in the motion, and

3. Defendants shall allow that entry.

DONE and DATED _____, 2010.

DISTRICT COURT JUDGE

1 Norman J. Mullen
2 Special Assistant Attorney General
3 Department of Environmental Quality
4 Legal Unit, Metcalf Building
5 P.O. Box 200901
6 Helena, Montana 59620-0901
7 Telephone: (406) 444-4961

8 Attorney for Plaintiff

9 MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

10 STATE OF MONTANA ex rel.
11 DEPARTMENT OF ENVIRONMENTAL
12 QUALITY,

13 Plaintiff,

14 vs.

15 MARVIN MINTYALA and SANDY
16 MINTYALA, as individuals and as officers,
17 directors, and shareholders of Mister "M"
18 Disposal Inc., MISTER "M" DISPOSAL,
19 MISTER "M" DISPOSAL INC., et al,

20 Defendants.

Case No.: DV-2000-146

**AFFIDAVIT OF MARTIN VAN OORT IN
SUPPORT OF MOTION TO DRILL AND
ABANDON MONITORING WELLS**

21 I, Martin Van Oort, being duly sworn, state as follows:

22 1. I am over 18 years of age.

23 2. I reside in Lewis and Clark County.

24 3. In 2001, I received the degree of Bachelor of Science in Geology from Hope College
in Holland, Michigan. In 2005, I received the degree of Master of Science in Geology, with
emphasis on hydrogeology, from the Ohio State University, in Columbus, Ohio.

4. From 2005 to 2008, I worked for the environmental consulting company, GeoTrans,
Inc. in Sterling, Virginia, as a Project Hydrogeologist. My duties with GeoTrans, Inc. included

1 evaluating ground water issues at contaminated sites, conducting ground water and soil
2 sampling, and overseeing the installation of more than a dozen ground water monitoring wells.
3 5. Since September 2008, I have been employed as an Environmental Science
4 Specialist for the Montana Department of Environmental Quality (Department), Permitting and
5 Compliance Division, Waste and Underground Tank Management Bureau, Solid Waste Section.
6 I serve as the hydrogeologist for the Department's Solid Waste Section. My principal
7 responsibility is to oversee ground water monitoring and corrective action activities at the 34
8 active and closed solid waste management facilities in the state that are required to perform
9 ground water monitoring. In addition, I provide hydrogeological expertise for the Solid Waste
10 Section in the review of new solid waste management facility license applications and license
11 expansions. I have officially reviewed and approved Ground Water Monitoring Plans for 12
12 facilities, and have informally reviewed the ground water monitoring programs at all other solid
13 waste management facilities for compliance with the laws and rules of the State of Montana.

14 6. My review of the Department's files indicates that the Defendants have not conducted
15 any ground water monitoring at the closed Mister M Landfill (Landfill) east of Lewistown,
16 Montana, since 1999. Therefore, the Department's Solid Waste Section has been conducting
17 post-closure ground water monitoring there since 2004.

18 7. In addition, my review of the Department's files also indicates that the Defendants
19 have not submitted an update to the ground water Sampling and Analysis Plan (SAP) for the
20 Landfill as ordered by this Court in the Default Judgment of September 13, 2002. I cannot find
21 any record that the Defendants have conducted any post-closure care at the Landfill since 1999.

22 8. Previous ground water sampling conducted by Marvin Mintyala from 1994 to 1999
23 had indicated potential volatile organic compound (VOC) contamination of ground water in both
24 the shallow shaley bedrock and in the underlying Fall River Sandstone aquifer. This

1 contamination had been attributed by Mr. Mintyala's consultants to unclean sampling practices
2 and cross contamination; however, this attribution was never adequately demonstrated to the
3 Department. Sampling conducted on behalf of the Department by Tetra Tech, a contracting
4 environmental consulting company, from 2004 to 2007, and by the Department in 2009,
5 confirmed that VOC contamination was present in the former office well, which is completed in
6 the Fall River Sandstone 75 feet below the surface.

7 9. During the history of ground water sampling at the Landfill, the concentrations of two
8 VOCs detected in the former office well, Vinyl Chloride and cis-1,2-Dichloroethene, have
9 exceeded their respective Montana Human Health Standards for Ground Water as listed in
10 Circular DEQ-7, Montana Numeric Water Quality Standards. The health standard for Vinyl
11 Chloride is 0.2 $\mu\text{g/L}$ (micrograms per liter), and the maximum concentration detected at the
12 landfill was 4.6 $\mu\text{g/L}$. The health standard for cis-1,2-Dichloroethene is 70 $\mu\text{g/L}$, and the
13 maximum concentration detected at the landfill was 148 $\mu\text{g/L}$. Both of these maximums
14 occurred in November 1998, and while concentrations currently are lower, Vinyl Chloride
15 concentrations remained above the health standard in October 2009 at 0.59 $\mu\text{g/L}$. The
16 concentration of cis-1,2-Dichloroethene was below the health standard in October 2009 at 22
17 $\mu\text{g/L}$.

18 10. To determine if this contamination was limited to the well, as would be the case if the
19 contamination was due to unclean sampling practices, or if it represented contamination of the
20 surrounding Fall River Sandstone aquifer, the Department conducted a field test in June 2009.
21 This test consisted of purging approximately 2000 gallons of water from the former office well
22 over three consecutive days of pumping. Samples for analysis for VOCs were collected before
23 and after the test. If contamination was limited to the former office well, a purge of this
24 considerable volume should have resulted in a notable decrease in VOC concentrations, as the

1 well bore of the former office well stores less than 40 gallons. The results of the sampling
2 demonstrated the opposite: an increase in VOC concentrations after the test. This result indicates
3 that the VOCs detected in the former office well most likely represent contamination of the Fall
4 River Sandstone aquifer by landfill leachate.

5 11. Montana's administrative rules concerning ground water monitoring for solid waste
6 management systems such as the Mister M landfill are found in ARM Title 17, chapter 50,
7 subchapter 13. They are authorized by § 75-10-204(5), MCA. They require that the monitoring
8 network at a Class II landfill unit be sufficient to ensure detection of ground water contamination
9 in the uppermost aquifer. See ARM 17.50.1304(1).

10 12. The former office well is completed in the uppermost aquifer. Completed means it
11 was constructed and screened to sample from that aquifer. However, because it was constructed
12 as a water supply well for the landfill office, it was not constructed according to the monitoring
13 well construction requirements in the rules of the Montana Board of Water Well Contractors,
14 ARM Title 36, chapter 21, subchapter 8, which are referred to in ARM 17.50.1304(7).

15 13. The substandard construction of the former office well makes results from samples
16 collected from that well less precise and accurate than results from samples collected from a
17 properly constructed monitoring well. The reasons for this are: length of the screen, possible
18 contamination from a pump or other equipment, and the lack of a well log. In addition, the
19 larger diameter of the former office well makes it more difficult to sample than a monitoring
20 well. More detail on each of these reasons follows.

21 14. First, the length of the screen for a water supply well, which is the part of the well
22 piping that has slits in it so that water can enter from the surrounding rock, is likely to be much
23 longer than a screen for a monitoring well. It could allow water from another rock layer to enter
24 //

1 the well pipe. This could lead to dilution of the contamination in a sample from the former
2 office well in comparison to the concentration in the aquifer.

3 15. Second, the former office well, as a water supply well, had a pump and other parts in
4 it that may have contained oil, grease, and possibly other contaminants. Monitoring of such a
5 well could result in detections of contaminants that came from the pump and not from the
6 surrounding aquifer.

7 16. Third, the Department has not been able to find a well log for the former office well.
8 If the sealing, called grouting, of that well was done improperly, contaminants and water may
9 leak into the well, either from the surface or from other rock strata surrounding the well, move
10 down to the screened section, and enter the water that will be removed from the well for analysis.
11 This could skew results so they may not represent the true contaminant levels in the aquifer
12 being sampled.

13 17. Fourth, the water supply well has a diameter of 4 inches, but the ground water
14 monitoring well that the Department wishes to install would have a diameter of 2 inches. The
15 same length of a 2-inch diameter well contains one-quarter of the water of a 4-inch diameter
16 well, and would take only one-quarter of the time to bail. Bailing is the process of removing
17 water from the well through a mechanical device called a bailer that must be lowered into the
18 well. A bailer holds only about a quart. Under proper ground water monitoring protocol, a well
19 should be bailed to remove three times the volume of water stored in the well before a sample
20 can be taken. The typical volume in the former office well that should be bailed before sampling
21 is approximately 85 gallons. The 4-inch diameter office well would require over five hours to
22 bail, but it would take only about an hour and fifteen minutes to bail a similar 2-inch diameter
23 well. As a result, the Department can save significant staff or consultant time, and the resources
24 //

1 available to conduct post-closure care at the Mr. M. Landfill, by using a well that is 2, rather than
2 4, inches in diameter.

3 18. For all of these reasons, I believe that a new ground water monitoring well is needed.

4 19. Also, of critical importance at a landfill where contamination has been detected is the
5 determination whether the contamination in excess of an MCL has migrated beyond the Relevant
6 Point of Compliance (RPOC), because this could require initiation of corrective measures to
7 remediate the contamination. Under ARM 17.50.1204(3), the RPOC "may not be more than 150
8 meters from the waste management unit boundary and must be on land owned by the owner of
9 the Class II or Class IV landfill unit." In practice, the Department typically designates the RPOC
10 at the maximum-allowed point. This is 150 meters from the waste unit, or at the property
11 boundary, whichever is closer to the waste unit. The former office well is located approximately
12 75 meters beyond the waste disposal unit boundary and 60 meters inside the facility property
13 boundary; thus it is located well within the distance allowed for the RPOC. It has been used as
14 an RPOC well in the absence of a well constructed according to monitoring well standards closer
15 to the edge of the 150-meter maximum allowed for the RPOC. However, because of the location
16 of the former office well, it is not useful to determine if contamination has migrated near the
17 maximum distance of 150 meters for the RPOC.

18 20. Because of the contamination of the Fall River Sandstone aquifer at the former office
19 well and the substandard construction of that well, the Department has determined that it is no
20 longer adequate to be used as an RPOC well. Because that well is located inside the distance
21 allowed for the RPOC, the Department has determined that a new well installed as an RPOC
22 well down-gradient of the former office well would be more protective of human health and the
23 environment. It would be more protective because it would be properly constructed as a ground
24 water well, and therefore yield more precise and accurate results than the substandard former

1 office well, as discussed above, and also because it would be located closer to the edge of the
2 150-meter RPOC limit, which would allow the Department to determine if the ground water
3 quality standards were being met there. Currently, the Department has no way of knowing how
4 far the contamination extends, and the proposed new well will allow the Department to learn if
5 the contamination detected in the former office well extends near the maximum distance allowed
6 for the RPOC. This new well would be designated MW-11.

7 21. The Department has determined an appropriate location for new well MW-11 based
8 on site hydrogeology. Previous studies have indicated that the direction of ground water flow in
9 the Fall River Sandstone aquifer is approximately to the west-southwest; thus well MW-11
10 should be installed to the west-southwest of the former office well so as to intercept the plume of
11 VOC contamination if it extends to the RPOC. Well MW-11 should be located near the western
12 facility property boundary, approximately five meters north of current wells MW-1 and MW-8,
13 and approximately 130 meters from the waste management unit boundary. Please see the map
14 attached here as Exhibit 2. Well MW-11 should be approximately 70 feet deep to be completed
15 in the Fall River Sandstone aquifer at the same elevation as the former office well.

16 22. Additionally, between the October 2009 sampling event and the Department's latest
17 visit to the site in February 2010, well MW-10R was damaged. Preliminary observations
18 indicate that the well was struck by a vehicle. The external steel casing was dislodged and bent,
19 and the well is obstructed approximately four feet below the top of the inner casing, indicating
20 that the PVC inner casing is likely broken. The Department believes this damage to be
21 irreparable. Well MW-10R is located approximately 40 meters southwest of the waste unit
22 boundary and serves as an RPOC well for the facility. Well MW-10R has a total depth of
23 approximately 50 feet and is completed in a minor sandstone unit in the shallow shaley bedrock.

24 //

23. The Department proposes to replace damaged well MW-10R with a new RPOC well that will be more protective of human health and the environment. This well would be designated MW-12. New well MW-12 would be located approximately 90 meters west-southwest of well MW-10R between the west detention pond and the old railroad grade, and would be approximately 80 feet deep and completed in the Fall River Sandstone Aquifer. New well MW-12 would be approximately 130 meters from the waste unit boundary. Please see the map attached as Exhibit 2. This location would be more protective of human health and the environment than the current RPOC well MW-10R because it would be located directly up-gradient from the nearest down-gradient domestic well to the facility and would be completed in the same aquifer as that well. In this way, any potential contaminant release from the landfill would be detected in new well MW-12 before it reached the domestic well.

24. The Department also proposes to abandon wells MW-4, MW-7, MW-8, and MW-10R. Wells MW-4, MW-7, and MW-8 are completed at a shallow depth (20-25 feet) and rarely contain water, making them of little use for further ground water monitoring at the facility. Well MW-10R has been damaged and is no longer usable as a monitoring well. Abandonment is required to seal off and plug a well that is not being used so that contaminants cannot move within the well bore between the surface and ground water or between different rock layers.

25. The Department would supervise the installation of new wells MW-11 and MW-12, and the abandonment of wells MW-4, MW-7, MW-8, and MW-10R, which would be performed under contract by a licensed well driller. The new wells would be constructed according to the requirements in ARM 17.50.1304(3) and (7). Abandonment procedures are governed by ARM 17.50.1312, and the wells would be abandoned as required by that rule. Installation and abandonment of the wells would require access to the well locations by the drill rig truck and one or more support trucks. The well locations are all near existing facility access roads, so minimal

1 disturbance is expected from this access. The well drilling and abandonment would likely be
2 completed in two or three days of work at the facility. To enable the Department to better define
3 the contaminant plume and the risks to human health and the environment, the Department
4 would like to have the new wells in place prior to the next ground water monitoring event at the
5 Landfill, which is scheduled for May or June 2010. The Department has prepared bid documents
6 for the desired work, which can be published as soon as this Court were to authorize site access.

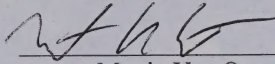
7 26. The information concerning the sampling results and the need to construct new wells
8 and abandon others is the kind of information that needs to be addressed in an SAP for the
9 Landfill. In the absence of an SAP prepared by the owners, the Department prepared an SAP for
10 the facility in May 2009. The Department will update this SAP as necessary when wells are
11 added or removed, or when sampling and analysis procedures change.

12 27. The Department described this project to Marvin and Sandy Mintyala in a letter
13 mailed on August 28, 2009, and asked for their consent to enter for it. See Exhibit 3. They did
14 not respond, so the Department needs to request an order.

15 28. To allow for the flexibility needed for me to coordinate this well drilling and
16 abandonment project, I request that the Department and its contractors be authorized to enter to
17 perform and oversee this work from April 1 through June 30, 2010.

18 29. Costs for the installation of new wells MW-11 and MW-12, and the abandonment of
19 wells MW-4, MW-7, MW-8, and MW-10R, would be paid from the post-closure care fund
20 established for the facility, which is in a trust account managed for the benefit of the Department
21 by U.S. Bank. I estimate that the work described above would cost about \$10,000. About
22 \$198,000 was placed in the trust as a result of this lawsuit, and additional funds have been
23 obtained through execution and placed in it. The Department has been directing the trustee to
24 pay the yearly costs of ground water monitoring and analysis at the Landfill. In 2009, for

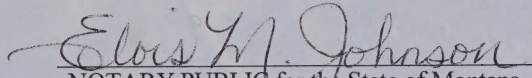
1 example, the Department conducted three monitoring events, including the one described above,
2 at a cost of about \$11,700. I expect that future annual ground water monitoring costs will be
3 about \$7,500. There is now about \$194,000 in the trust.

4 
5 _____
6 Martin Van Oort

6 STATE OF MONTANA)

7 :SS
8 County of Lewis & Clark)

8 Subscribed and sworn to before me by Martin Van Oort this 16th day of March, 2010.

9 
10 _____
11 NOTARY PUBLIC for the State of Montana

11 Printed Name of Notary

12 Title _____

13 Residing at _____

14 My commission expires: _____

ELOIS M. JOHNSON
NOTARY PUBLIC for the State of Montana
Residing at Townsend, Montana
My Commission Expires 4/26/2013

15 (SEAL)

Exhibit 2: Map of Mister M Facility

Base Air Photo from 2004

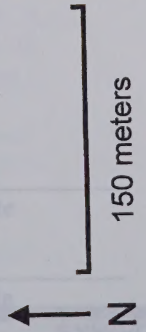
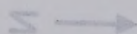


Exhibit 3: Map of Water Management Facilities

Base Aerial Photo from 2004



120 meters





Montana Department of
ENVIRONMENTAL QUALITY

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

August 28, 2009

Marvin & Sandy Mintyala
1265 Elm Street #34
Clarkston WA 99403-2374

**Re: Drilling of New Well, Abandonment of Old Wells at Mister M Landfill;
Montana DEQ v. Mintyala, Fergus County District Court Case DV 2000-146**

Dear Mr. and Mrs. Mintyala:

I am writing to ask you to consent to the installation of a new well and the abandonment of old wells at the Mister M landfill, which is on property owned by you.

The Department's monitoring of ground water at the Mister M landfill in June 2009 revealed contamination in excess of Montana ground water quality standards for vinyl chloride. Another contaminant of concern is cis-1,2-Dichloroethene. Its concentration in the old office well exceeded the ground water quality standard in 1998, but is now almost 2/3 of the standard.

Because of these results, and the opinion of Department hydrogeologist Martin Van Oort that is based on those results and his review of the monitoring wells at the landfill, the Department believes it is necessary to install a new ground water monitoring well and to abandon other wells on the landfill property. I am enclosing his justification for that work.

Would you please consent, by September 8, 2009, to the installation of the well and the abandonment discussed in that justification? I have enclosed a copy of this letter with a line for your consent. If you consent, please sign on the line for your consent and send the signed letter back to me using the enclosed self-addressed, stamped envelope.

If you do not consent, the Department will ask the court to authorize this work.

Please contact me if you wish to discuss this matter.

Sincerely,

Norman J. Mullen
Attorney for Department
406-444-4961 voice; 444-4386 fax
nmullen@mt.gov email

consent _____

Marvin Mintyala

date _____

encls.
c. DEQ- ENF, WUTMB-SW, chron

consent _____

Sandy Mintyala

date _____

JUSTIFICATION FOR NEW WELL AND ABANDONMENT BY DEQ SOLID WASTE SECTION HYDROGEOLOGIST MARTIN VAN OORT

The Montana Department of Environmental Quality, Solid Waste Section (Department) has been conducting post-closure groundwater monitoring at the closed Mister M Landfill east of Lewistown, Montana since 2004. Previous groundwater sampling conducted by the owner of the facility, Marvin Mintyala, from 1994 to 1999, had indicated potential volatile organic compound (VOC) contamination of groundwater in both the shallow shaley bedrock and in the underlying Fall River Sandstone aquifer. This contamination had been attributed by Mr. Mintyala's consultants to unclean sampling practices and cross contamination; however, this attribution was never adequately demonstrated to the Department. Sampling conducted on behalf of the Department by Tetra Tech, a contracting environmental consulting company, from 2004 to 2007 and by the Department in 2009, confirmed that VOC contamination was present in the former office well, which is completed in the Fall River Sandstone 75 feet below the surface.

During the history of groundwater sampling at the facility, the concentration of two VOCs detected in the former office well, Vinyl Chloride and cis-1,2-Dichloroethene, have exceeded their respective Montana Human Health Standards for Ground Water as listed in Circular DEQ-7, Montana Numeric Water Quality Standards. The health standard for Vinyl chloride is 0.2 $\mu\text{g/L}$ (micrograms per liter), and the maximum concentration detected at the landfill was 4.6 $\mu\text{g/L}$. The health standard for cis-1,2-Dichloroethene is 70 $\mu\text{g/L}$ and the maximum concentration detected at the landfill was 148 $\mu\text{g/L}$. Both of these maximums occurred in November 1998, and while concentrations currently are lower, Vinyl chloride concentrations remained above the health standard in June 2009 at 0.71 $\mu\text{g/L}$. The concentration of cis-1,2-Dichloroethene was below the health standard in June 2009 at 46 $\mu\text{g/L}$.

To determine if this contamination was limited to the well, as would be the case if the contamination was due to unclean sampling practices, or if it represented contamination of the surrounding Fall River Sandstone aquifer, the Department conducted a field test in June 2009. This test consisted of purging approximately 2000 gallons of water from the former office well over three consecutive days of pumping. Samples for analysis for VOCs were collected before and after the test. If contamination was limited to the former office well, a purge of this considerable volume should have resulted in a notable decrease in VOC concentrations, as the well bore of the former office well stores less than 40 gallons. The results of the sampling demonstrated the opposite: an increase in VOC concentrations after the test. This result indicates that the VOCs detected in the former office well most likely represent contamination of the Fall River Sandstone aquifer.

The solid waste management ground water rules, which are authorized by § 75-10-204(5), MCA, require that the monitoring network at a Class II landfill unit be sufficient to ensure detection of ground water contamination in the uppermost aquifer. See ARM 17.50.706(2)(a). The former office well is completed in the uppermost aquifer; however, because it was constructed as a water supply well for the landfill office, it was not constructed according to the monitoring well construction requirements in ARM 17.50.707. The substandard construction of the former office well makes samples collected from that well less precise and accurate than samples collected from a properly constructed monitoring well. Of critical importance at a landfill where contamination has been detected is the determination if the contamination has migrated beyond the Relevant Point of Compliance (RPOC), because this could require initiation of corrective

measures to remediate the contamination. Under ARM 17.50.710(1)(f), the RPOC is to be located "no more than 150 meters beyond the waste management unit boundary and on land owned by the owner of the disposal unit." In practice, the Department designates the RPOC at the maximum allowed point. This is 150 meters from the waste unit, or at the property boundary, whichever is closer to the waste unit. The former office well is located approximately 75 meters beyond the waste disposal unit boundary and 60 meters inside the facility property boundary; thus it is located well within the distance allowed for the RPOC. It has been used as the RPOC well in the absence of a well constructed according to monitoring well standards closer to the edge of the 150 meter maximum allowed for the RPOC. However, because of the location of the former office well, it is not useful to determine if contamination has migrated beyond the maximum allowed RPOC.

Because of the contamination of the Fall River Sandstone aquifer at the former office well and the substandard construction of the former office well, the Department has determined that this well is no longer adequate to be used as the RPOC well. Because of the location of the former office well inside the distance allowed for the RPOC the Department has determined that a new well installed as the RPOC well down-gradient of the former office well would be more protective of human health and the environment. The Department has also determined an appropriate location for the new RPOC well based on site hydrogeology. Previous studies have indicated that the direction of ground water flow in the Fall River Sandstone aquifer is approximately to the west-southwest; thus the new ground water monitoring well should be installed to the west-southwest of the former office well so as to intercept the VOC plume if it is present. The new ground water monitoring well should be located near the western facility property boundary approximately 20 meters northwest of current wells MW-1 and MW-8, and approximately 130 meters from the waste management unit boundary. Please see the map attached as Exhibit A. The well should to be approximately 70 feet deep to be completed in the Fall River Sandstone aquifer at the same elevation as the former office well.

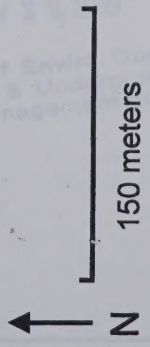
The Department also proposes to abandon wells MW-4, MW-7, and MW-8. These wells are completed at a shallow depth and rarely contain water, making them of little use for further ground water monitoring at the facility. Abandonment is required to seal off and plug a former well so that contaminants cannot move within the well bore between the surface and ground water or between different rock layers.

The Department would supervise the installation of the new well and the abandonment of wells MW-4, MW-7, and MW-8, which would be performed by a contracted licensed well driller. The new well would be constructed according to the requirements in ARM 17.50.707. Abandonment procedures are governed by ARM 17.50.722(1). Installation and abandonment of the wells would require access to the well locations with the drill rig truck and one or more support trucks. The well locations are all near existing facility access roads, thus minimal disturbance is expected from this access. The well drilling and abandonment would likely be completed in one or two days of work at the facility. I believe that the work should be done before snow falls, because it could interfere with the drilling and abandonment activities.

Costs for the installation of the new well and the abandonment of wells MW-4, MW-7, and MW-8 would be paid from the post-closure care fund established for the facility.

Exhibit A: Map of Mister M Facility

Base Air Photo from 2004



County Lergus
Facility & # Ca-302
Closure
Finan Assur Landfarm
GW Corr Meas Liner
GW Monitoring Methane
GW Reports O & M
Inspections Run - On
Other: Litigation



Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

November 19, 2009

Phyllis D. Smith
Clerk 10th Judicial District Court
PO Box 1074
Lewistown MT 59457-1074

**Re: Filing of Writ of Execution and Sheriff's Report/Return in Montana
Department of Environmental Quality v. Mintyala et al, DV 2000-146**

Dear Ms. Smith or Clerk's staff:

I am enclosing the following documents for the case referred to above:

- an original and a copied first page of a Writ of Execution issued August 5, 2009;
- an original and a copied first page of a Report of Sheriff's Sale Under Writ of Execution, which includes a Return;
- a self-addressed, stamped envelope (SASE).

Please file the Writ and Report. Please date-stamp the copied first pages and mail them to me in the SASE.

Thank you for your assistance. Please contact me if there are any problems with my request or if you have any questions.

Sincerely,

Norman J. Mullen
Attorney for Department
406-444-4961 voice; 444-4386 fax
nmullen@mt.gov

48
RECEIVED

NOV 20 2009

Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau

encls.

c. DEQ- ENF, WUTMB-SW, chron

ORIGINAL

Norm Mullen
Special Assistant Attorney General
Montana Department of Environmental Quality
1520 E. Sixth Avenue
P.O. Box 200901
Helena, Montana 59620-0901
(406) 444-4961

Attorney for Department

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

STATE OF MONTANA ex rel. DEPARTMENT
OF ENVIRONMENTAL QUALITY,

Plaintiff,

vs.

Case No.: DV-2000-146

**NINTH WRIT OF
EXECUTION**

MARVIN MINTYALA and SANDY
MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC., LEWISTOWN
LANDFILL, DOMENIC MASSARI, as trustee
for trust holding money in SouthTrust Asset
Management Co. trust account # 2640000519,
CUMBERLAND CASUALTY & SURETY
COMPANY, a Florida Corporation, as
beneficiary of trust holding money in SouthTrust
Asset Management Co. trust account #
2640000519, and SOUTHRUST ASSET
MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding money
in SouthTrust Asset Management Co. trust
account # 2640000519,

Defendants.

RECEIVED

NOV 20 2009

Dept. of Enviro. Quality
Waste & Underground
Tank Management Bureau

1 **FROM THE STATE OF MONTANA TO THE SHERIFF OF FERGUS COUNTY OR**
2 **LEVYING OFFICER:**

3 WHEREAS, on September 13, 2002, the State of Montana ex rel. Department of
4 Environmental Quality obtained a judgment in the Montana Tenth Judicial District Court, Fergus
5 County, against Marvin Mintyala, Sandy Mintyala, and Mister "M" Disposal Inc., as follows:

6	Original or Balance Due on Judgment in the amount of:	\$ 318,363.26
7	Amount of judgment for which execution issued on 9/18/03	131,556.10
8	Amount of judgment for which execution issued on 3/4/04	134,942.88
9	Amount of judgment for which execution issued on 7/12/04	136,382.53
10	Amount of judgment for which execution issued on 1/20/05	139,405.68
11	Amount of judgment for which execution issued on 1/12/06	142,825.66
12	Amount of judgment for which execution issued on 6/13/06	144,182.40
13	Amount of judgment for which execution issued on 7/24/08	166,970.80
14	Amount of judgment for which execution issued on 8/11/08	167,529.48

15 **Total sum due and owing on August 3, 2009 after credits and costs:** \$ 175,144.47

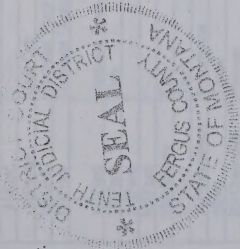
16 The basis for these amounts is found in the affidavit of Norman J. Mullen, which is attached to
17 this Writ.

18 NOW, you, the sheriff or levying officer, are hereby required to make this sum due on the
19 judgment or damages, with interest, costs, and accruing costs, to satisfy the judgment out of the
20 PERSONAL PROPERTY and WAGES of the debtor, Marvin Mintyala, Sandy Mintyala, and
21 Mister M Disposal Inc., NOT EXEMPT FROM EXECUTION on the day on which the judgment
22 was docketed in Fergus County, or at any time hereafter, and return this writ not less than 10
23 days nor more than 120 days after the date of issuance subscribed thereon, with a record of your
24 actions endorsed thereon.

25 Given under my hand this 5th day of August, 2009.

26 CLERK OF DISTRICT COURT

27 Phyllis D. Smith
28 By:



	Make	Model	Color	VIN #	License #	Comments	Reg. Owner	Street/PO Box	City	State	Zip Code
1	Ford		White	1FDWD74N5BVJ274373			No Records Available				
2	Mack	Truck	Yellow	No Vin Available		No Rear End	No Records Available				
3	Ford	Truck	White	07-79	8T-13506	Garbage Truck	Mintyala, Marvin E.	Gilt Edge Rte	Lewistown	MT	59457
4	Ford		Yellow	No Vin Available	8T-6216		No Records Available				
5	Ford	Car	Green	FY6E2Y4FY6B06059868		Car Body Only	No Records Available				
6	Jeep	Cherokee	Yellow/Brown	J6F16MA059934	8A-AB40		Martin, John	144 Sapphire Drive	Lewistown	MT	59457
7	Dodge	Utility Truck	White	D31BJ2S550039			Mintyala, Marvin E.	HC 85 Box 4066	Lewistown	MT	59457
8	GMC		Blue	TKL147J501036			Mintyala, Marvin E.	Gilt Edge Rte	Lewistown	MT	59457
9	Dodge	Club Cab	White	W17AE45009232			No Records Available				
10	GMC	Garbage Truck	White	TCM67TV602224			Mister M Disposal, Inc.	HC 85 Box 4066	Lewistown	MT	59457
11	Ford	Garbage Truck	Orange	C75FUB29447			Mintyala, Marvin E.	Gilt Edge Rte	Lewistown	MT	59457
12	Ford	Garbage Truck	White	No Vin Available		Mister M Disposal	No Records Available				
13	Ford	Cab	White	CHASS1S-CAB ???? ?	8T-7970		No Records Available				
14	Ford		Blue	C76EUG61582			No Records Available				
15	Ford		White	No Vin Available	8T-8088		No Records Available				
16	Mercury	Car	Brown	F8K35T529372	8P-1505A		Elfering, Thomas	243 SW Cedar	Lewistown	MT	59457
17	Ford	Truck	White	No Vin Available	8T-4103	Lewistown Coke	No Records Available				
18	Winnnebago	Motorhome	White/Crème	6381860945	8P-2154A		Mintyala, Marvin and Sandra	HC 85 Box 4066	Lewistown	MT	59457
19	Hi	Truck	Yellow/White	17073			No Records Available				
20	Chevrolet	Pick-up	Green/Red	CE330S170736			No Records Available				
21											
22	Ford	500 Truck	Blue	F50CKH50338	8T-386		Mintyala, Marvin E.	Gilt Edge Rte	Lewistown	MT	59457
23	Ford	750 Truck	White	N75KU720591			No Records Available				
24	Jeep	Wagon 4WD	White/Gray	No Vin Available			No Records Available				
25	Ford	C-800	Red	No Vin Available		Cab Only	No Records Available				
26	Garbage Compactor		White	No Vin Available			No Records Available				
27	Ford	Pick-up/Dually	Blue/White Top	T70D0U12018	8T-14706	Double dually w/no box	Mintyala, Marvin E.	Gilt Edge Rte	Lewistown	MT	59457
28	Ford	Garbage Truck	White/Blue Primer	C75EUB14691	8T-2082A		Mister M Disposal, Inc.	HCR 85 Box 4066	Lewistown	MT	59457
29	Chevrolet	Garbage Truck	White	Partial Vin - 7769?	8-417		No Records Available				
30	Chevrolet	Pick-up	Brown/White Top	No Vin Available	8T-5094		No Records Available				
31	Chevrolet	Thriftmaster	Blue, Brown, Green	53J003841			No Records Available				
32	Ford	Garbage Truck	White	No Vin Available	8T-4514		No Records Available				
33	Dodge	500 Pick-up	Orange	M6D5 H06924		No Bed	No Records Available				
34	Dodge	Club Cab 4x4	Brown 2 tone	1B7KW25T9BS184755			M and S Enterprises	201 E Lyndale PMB 119	Helena	MT	59601
35	Chevrolet '85'	Pick-up	Brown 2 tone	1CCHK34J0FS145263			No Records Available				
36	Ford	Garbage Truck	Red/White box	F75FUA30621			Mintyala, Marvin E.	Gilt Edge Rte	Lewistown	MT	59457
37	GMC '84'	Garbage Truck	Blue/Blue box	1GDS7D4G4BV582947			No Records Available				
38	GMC 8500	Garbage Truck	White/White box	TCE678V565132			Mister M Disposal, Inc.	HC 85 Box 4066	Lewistown	MT	59457
39	Ford 750	Garbage Truck	Red/White box	C76FUF92547		Cab Over style	No Records Available				
40	Mack	Garbage Truck	Green/White	MB401 P 2569			No Records Available				
41	International	Garbage Truck	White/White box	416080g177738		Loadstar 1600					
42	International	Garbage Truck	White	FD117956 F		No Bed					
43	Ford	Garbage Truck	White/White box	No Vin Available		No Doors					
44	Dodge	400 Tow Truck	White & Maroon	11029349							
45	Ford '40's'	Winch/Tow Truck	Red	No Vin Available		No doors					
46	Mercury '80's'	Zephyr Sedan	Blue	No Vin Available							
47		Crawler	Yellow			Front roll cage with two braces and a round black feature on the cab					
48		Crawler	Yellow			No enclosure for operator					

EXHIBIT

A

tabbles

[illegible]

REPORT OF SHERIFF'S SALE UNDER WRIT OF EXECUTION

STATE OF MONTANA)
 : OFFICE OF THE SHERIFF
COUNTY OF FERGUS)

THOMAS L. KILLHAM, being first duly sworn upon oath,
deposes and says:

That he is the duly elected and qualified Sheriff of Fergus County, Montana; That the following is a full report of all proceedings relating to the attached 9th Writ of Execution and hereinafter described personal property which was levied upon at the request of NORMAN J. MULLEN, Special Assistant Attorney General for MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY;

That upon request by said NORMAN J. MULLEN, Special Assistant Attorney General for MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY, the hereinafter described personal property was taken into possession on the 28TH day of AUGUST, 2009;

Said property is described as follows:
SEE EXHIBIT A ATTACHED

That copies of the 9th Writ of Execution, Notice of Seizure and Notice of Exemptions were mailed to MARVIN MINTYALA, SANDY MINTYALA and MISTER "M" DISPOSAL, Defendants, on the 27TH day of AUGUST, 2009;

That copies of the 9th Writ of Execution, Notice To 3rd Person Of Seizure of Property and Notice of Seizure were mailed to TINA M. MINTYALA-STRICKER, on the 27TH day of AUGUST, 2009;

That copies of the 9th Writ of Execution, Notice To 3rd Person Of Seizure of Property and Notice of Seizure were mailed to STEVE MINTYALA, on the 28TH day of AUGUST, 2009;

That a copy of the Notice of Sheriff's Sale was mailed to MARVIN MINTYALA, SANDY MINTYALA and MISTER M DISPOSAL %Marvin Mintyala, Defendants, on the 20TH day of OCTOBER, 2009;

That a copy of the Notice of Sheriff's Sale was mailed to STEVEN C. MINTYALA and TINA M. MINTYALA-STRICKER, on the 20TH day of OCTOBER, 2009;

That I posted the Notice of Sheriff's Sale particularly describing the property, for not less than 5 days nor more than 10 days in four public places and also where the property was to be sold; And also caused due and legal written notice to be published at least one week before the sale in the Lewistown News Argus, a bi-weekly newspaper published in Fergus County;

That in accordance with said Notice of Sheriff's Sale, at the time and place designated thereon, to-wit; On the 30TH day of OCTOBER, 2009 at 10:00 A.M. at 7 and 9 Boyd Creek Road, Lewistown, Montana, I announced said sale, and thereupon exposed said personal property for sale by specifically calling for bids thereon;

That the					
48		Crawler	Yellow		No enclosure for operator
50		Crawler	Yellow		Front roll cage with one brace.
		Dozer Blade			

was sold to A.C.I. for the sum of Three Thousand Five Hundred Fifty Dollars (\$3,550.00) which was the highest and best bid at said sale;

That the					
60		Horse Trailer	Brown	Ser # 6418, License 8TR 310A	
62		Goose Neck Trailer	Red/White		

was sold to BILL BEVIS for the sum of One Thousand Six

Hundred Fifty Dollars (\$1,650.00) which was the highest and best bid at said sale;

That the					
63		Pallets of Brick	Red	10 Pallets	
		D2 Crawler			

was sold to BILL FOREMAN for the sum of Eight Hundred Dollars (\$800.00) which was the highest and best bid at said sale;

That the CATTLE GUARD and 10 BARRELS was sold to BILL GOETTICH for the sum of One Hundred Ten Dollars (\$110.00) which was the highest and best bid at said sale;

That the					
35	Chevrolet '85'	Pick-up	Brown 2 tone	1CCHK34JOFS145263	
	Dumpster		Green		

was sold to BUD RICKL for the sum of One Hundred Twenty Five Dollars (\$125.00) which was the highest and best bid at said sale;

That the					
55		Pull type scraper	Yellow		Unattached

was sold to DALLAS COLVIN for the sum of Two Thousand Five Hundred Dollars (\$2,500.00) which was the highest and best bid at said sale;

That the LINE LAYER was sold to JIM BRANNING for the sum of Five Hundred Dollars (\$500.00) which was the highest and best bid at said sale;

That the					
49		Crawler	Red		
51		Crawler	Yellow		No track on left side.
52		Crawler	Yellow D9		Enclosure, but no front roll bars.

53		Crawler	Yellow/Black CASE1150	Ser#7110335		Roll cage is black.
54		Crawler	Yellow/Gray			No blade or roll cage.
59		Tractor	Red			

was sold to JOHN BOWLIN for the sum of One Thousand Five Hundred Dollars (\$1,500.00) which was the highest and best bid at said sale;

That the

56		Self propelled scraper	Yellow	CAT Model DW10		
58		Pull type scraper	Yellow			Wheels near hitch

was sold to JOHN MAGYLI for the sum of Five Thousand Nine Hundred Dollars (\$5,900.00) which was the highest and best bid at said sale;

That the

	Garbage Dumpsters	two	Green			
20	Chevrolet	Pick-up	Green/Red	CE330S17073 6		

was sold to KEN SIROKY for the sum of Four Hundred Fifty Dollars (\$450.00) which was the highest and best bid at said sale;

That the

61			Goose Neck Trailer	Red		
----	--	--	--------------------	-----	--	--

was sold to KENNY RICH for the sum of One Thousand Five Hundred Dollars (\$1,500.00) which was the highest and best bid at said sale;

That the

7	Dodge	Utility Truck	White	D31BJ2S550039		
31	Chevrolet	Thriftmaster	Blue, Brown, Green	53J003841		

was sold to LYLE PERRY for the sum of Five Hundred Fifty

Dollars (\$500.00) which was the highest and best bid at said sale;

That the

		Axle - 2				
		Conveyor, bale loader				
		Jeep Grill				

was sold to TIM HAHN for the sum of Three Hundred Twenty Dollars (\$320.00) which was the highest and best bid at said sale;

That the

	Make	Model	Color	VIN #	Licens e #	Comments
1	Ford		White	1FDWD74N5BV J274373		
2	Mack	Truck	Yellow	No Vin Available		No Rear End
3	Ford	Truck	White	07-79	8T- 13506	Garbage Truck
4	Ford		Yellow	No Vin Available	8T- 6216	
5	Ford	Car	Green	FY6E2Y4FY6B 06059868		Car Body Only
6	Jeep	Cherokee	Yellow/Bro wn	J6F16MA0599 34	8A- AB40	
8	GMC		Blue	TKL147J5010 36		
9	Dodge	Club Cab	White	W17AE450092 32		
10	GMC	Garbage Truck	White	TCM67TV6022 24		
11	Ford	Garbage Truck	Orange	C75FUB29447		
12	Ford	Garbage Truck	White	No Vin Available		Mister M Disposal
13	Ford	Cab	White	CHASSIS- CAB?	8T- 7970	
14	Ford		Blue	C76EUG61582		

	Make	Model	Color	VIN #	Licenses #	Comments
15	Ford		White	No Vin Available	8T-8088	
16	Mercury	Car	Brown	F8K35T529372	8P-1505A	
17	Ford	Truck	White	No Vin Available	8T-4103	Lewistown Coke
18	Winnebago	Motorhome	White/Crème	6381860945	8P-2154A	
19	HI	Truck	Yellow/White	17073		
21	Buick		Blue/Green	1G4AB69XXDW487790		
22	Ford	500 Truck	Blue	F50CKH50338	8T-386	
23	Ford	750 Truck	White	N75KU720591		
24	Jeep	Wagon 4WD	White/Gray	No Vin Available		
25	Ford	C-800	Red	No Vin Available		Cab Only
26	Garbage Compactor		White	No Vin Available		
27	Ford	Pick-up/Dually	Blue/White Top	T70D0U12018	8T-14706	Double dually w/no box
28	Ford	Garbage Truck	White/Blue Primer	C75EUB14691	8T-2082A	
29	Chevrolet	Garbage Truck	White	Partial Vin - 7769?	8-417	
30	Chevrolet	Pick-up	Brown/White Top	No Vin Available	8T-5094	
32	Ford	Garbage Truck	White	No Vin Available	8T-4514	
33	Dodge	500 Pick-up	Orange	M6D5 H06924		No Bed
34	Dodge	Club Cab 4x4	Brown 2 tone	1B7KW25T9BS184755		
36	Ford	Garbage Truck	Red/White box	F75FUA30621		
37	GMC '84'	Garbage Truck	Blue/Blue box	1GDS7D4G4BV582947		

	Make	Model	Color	VIN #	Licens e #	Comments
38	GMC 8500	Garbage Truck	White/Whit e box	TCE678V5651 32		
39	Ford 750	Garbage Truck	Red/White box	C76FUF92547		Cab Over style
40	Mack	Garbage Truck	Green/Whit e	MB401 P 2569		
41	Internation al	Garbage Truck	White/Whit e box	416080g1777 38		Loadstar 1600
42	Internation al	Garbage Truck	White	FD117956 F		No Bed
43	Ford	Garbage Truck	White/Whit e box	No Vin Available		No Doors
44	Dodge	400 Tow Truck	White & Maroon	11029349 or 1481577548		
45	Ford '40's'	Winch/Tow Truck	Red	No Vin Available		No doors
46	Mercury '80's'	Zephyr Sedan	Blue	No Vin Available		
57		Scrap Metal				Throughout property, includes all caterpillar parts, etc.

63	42,305.00	Pallets of Brick	Red		MINUS 10 PALLETES SOLD TO BILL FORMAN
----	-----------	---------------------	-----	--	--

47		Crawler	Yellow		Front roll cage with two braces and a round black feature on the cab
----	--	---------	--------	--	---

was sold to PACIFIC STEEL AND RECYCLING for the sum of
Twenty Three Thousand Five Hundred Fifty Dollars (\$23,500.00)
which was the highest and best bid at said sale;

That the itemized amount of costs and expenses of Shobe Auction and Realty is as follows:

Commission @ 15%.....	\$ 6,435.75
Portable toilet rental.....	65.00
Advertising.....	720.60

TOTAL	<u>\$ 7,221.35</u>
-------	--------------------

That the itemized amount of sheriff's costs and expenses is as follows:

Writ of Execution.....	\$ 50.00
Warrant of Execution.....	35.00
Posting Notice of Seizure.....	35.00
Posting Notices of Sale.....	35.00
Sheriff's Sale.....	50.00
Publication.....	458.00
Mileage.....	
Copies.....	
Towing & Storage.....	

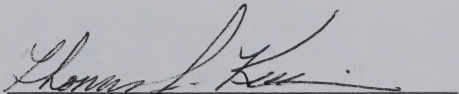
TOTAL.....	<u>\$ 663.00</u>
------------	------------------

That Shobe Auction and Realty have deducted from said sum for \$ 42,905.00 their fees, commission and expenses amounting to \$ 7,221.35 leaving a balance of \$ 35,683.65.

That I deducted from said sum of \$ 35,683.65 my fees, commission and expenses amounting to the sum of \$ 663.00 leaving a net balance of \$ 35,020.65 which I have paid to STATE OF MONTANA, DEPARTMENT OF ENVIRONMENTAL QUALITY. I hereby return said Writ of Execution SATISFIED IN PART.

DATED this 12TH day of NOVEMBER, 2009.

THOMAS L. KILLHAM, SHERIFF


THOMAS L. KILLHAM, SHERIFF

County Fergus
Facility & # CL 302
Closure
Finan Assur Landfarm
GW Corr Meas Liner
GW Monitoring Methane
GW Reports O & M
Inspections Run - On
Other: Litigation

CLERK OF THE
DISTRICT COURT
PHYLLIS D. SMITH

2009 NOV 23 PM 1 17

FILED
BY Sheila J. Machler
DEPUTY

1 Norm Mullen
Special Assistant Attorney General
2 Montana Department of Environmental Quality
1520 E. Sixth Avenue
3 P.O. Box 200901
Helena, Montana 59620-0901
4 (406) 444-4961
5 Attorney for Department

6
7
8 **MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY**

9 STATE OF MONTANA ex rel. DEPARTMENT
OF ENVIRONMENTAL QUALITY,

Case No.: DV-2000-146

10 Plaintiff,

**NINTH WRIT OF
EXECUTION**

11 vs.

12 MARVIN MINTYALA and SANDY
13 MINTYALA, as individuals and as officers,
directors, and shareholders of Mister "M"
14 Disposal Inc., MISTER "M" DISPOSAL,
MISTER "M" DISPOSAL INC., LEWISTOWN
15 LANDFILL, DOMENIC MASSARI, as trustee
for trust holding money in SouthTrust Asset
16 Management Co. trust account # 2640000519,
CUMBERLAND CASUALTY & SURETY
17 COMPANY, a Florida Corporation, as
beneficiary of trust holding money in SouthTrust
18 Asset Management Co. trust account #
2640000519, and SOUTHTRUST ASSET
19 MANAGEMENT COMPANY, a Florida
Corporation, as custodian of trust holding money
20 in SouthTrust Asset Management Co. trust
account # 2640000519,

21 Defendants.

22 **RECEIVED**

23 // NOV 25 2009

24 // DEPT. OF ENVIRO. QUALITY
WASTE & UNDERGROUND TANK
MANAGEMENT BUREAU

Page 1

Ninth Writ of Execution

C: ENF, WUTMB-SU 11/25/09 HJm

CLERK OF THE
DISTRICT COURT
PHYLLIS D. SMITH

REPORT OF SHERIFF'S SALE UNDER WRIT OF EXECUTION

2009 NOV 23 PM 1 17

STATE OF MONTANA)

FILED

:

OFFICE OF THE SHERIFF S. Sheila J. Machler

COUNTY OF FERGUS)

DEPUTY

THOMAS L. KILLHAM, being first duly sworn upon oath, deposes and says:

That he is the duly elected and qualified Sheriff of Fergus County, Montana; That the following is a full report of all proceedings relating to the attached 9th Writ of Execution and hereinafter described personal property which was levied upon at the request of NORMAN J. MULLEN, Special Assistant Attorney General for MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY;

That upon request by said NORMAN J. MULLEN, Special Assistant Attorney General for MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY, the hereinafter described personal property was taken into possession on the 28TH day of AUGUST, 2009;

Said property is described as follows:
SEE EXHIBIT A ATTACHED

That copies of the 9th Writ of Execution, Notice of Seizure and Notice of Exemptions were mailed to MARVIN MINTYALA, SANDY MINTYALA and MISTER "M" DISPOSAL, Defendants, on the 27TH day of AUGUST, 2009;

That copies of the 9th Writ of Execution, Notice To 3rd Person Of Seizure of Property and Notice of Seizure were mailed to TINA M. MINTYALA-STRICKER, on the 27TH day of AUGUST, 2009;

That copies of the 9th Writ of Execution, Notice To 3rd Person Of Seizure of Property and Notice of Seizure were mailed to STEVE MINTYALA, on the 28TH day of AUGUST, 2009;

RECEIVED

NOV 25 2009

DEPT. OF ENVIRO. QUALITY
WASTE & UNDERGROUND TANK
MANAGEMENT BUREAU

County Fergus
Facility & # CL-302
Closure
Finan Assur Landfarm
GW Corr Meas Liner
GW Monitoring Methane
GW Reports O & M
Inspections Run - On
Other: Litigation



Montana Department of
ENVIRONMENTAL QUALITY

RECEIVED
AUG 31 2009
Dept. of Environ. Quality
Waste & Underground
Tank Management Bureau

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

August 28, 2009

Marvin & Sandy Mintyala
1265 Elm Street #34
Clarkston WA 99403-2374

**Re: Drilling of New Well, Abandonment of Old Wells at Mister M Landfill;
Montana DEQ v. Mintyala, Fergus County District Court Case DV 2000-146**

Dear Mr. and Mrs. Mintyala:

I am writing to ask you to consent to the installation of a new well and the abandonment of old wells at the Mister M landfill, which is on property owned by you.

The Department's monitoring of ground water at the Mister M landfill in June 2009 revealed contamination in excess of Montana ground water quality standards for vinyl chloride. Another contaminant of concern is cis-1,2-Dichloroethene. Its concentration in the old office well exceeded the ground water quality standard in 1998, but is now almost 2/3 of the standard.

Because of these results, and the opinion of Department hydrogeologist Martin Van Oort that is based on those results and his review of the monitoring wells at the landfill, the Department believes it is necessary to install a new ground water monitoring well and to abandon other wells on the landfill property. I am enclosing his justification for that work.

Would you please consent, by September 8, 2009, to the installation of the well and the abandonment discussed in that justification? I have enclosed a copy of this letter with a line for your consent. If you consent, please sign on the line for your consent and send the signed letter back to me using the enclosed self-addressed, stamped envelope.

If you do not consent, the Department will ask the court to authorize this work.

Please contact me if you wish to discuss this matter.

Sincerely,

Norman J. Mullen
Attorney for Department
406-444-4961 voice; 444-4386 fax
nmullen@mt.gov email

consent _____
Marvin Mintyala date _____

encls. _____
c. DEQ- ENF, WUTMB-SW, chron consent _____
Sandy Mintyala date _____

JUSTIFICATION FOR NEW WELL AND ABANDONMENT BY DEQ SOLID WASTE SECTION HYDROGEOLOGIST MARTIN VAN OORT

The Montana Department of Environmental Quality, Solid Waste Section (Department) has been conducting post-closure groundwater monitoring at the closed Mister M Landfill east of Lewistown, Montana since 2004. Previous groundwater sampling conducted by the owner of the facility, Marvin Mintyala, from 1994 to 1999, had indicated potential volatile organic compound (VOC) contamination of groundwater in both the shallow shaley bedrock and in the underlying Fall River Sandstone aquifer. This contamination had been attributed by Mr. Mintyala's consultants to unclean sampling practices and cross contamination; however, this attribution was never adequately demonstrated to the Department. Sampling conducted on behalf of the Department by Tetra Tech, a contracting environmental consulting company, from 2004 to 2007 and by the Department in 2009, confirmed that VOC contamination was present in the former office well, which is completed in the Fall River Sandstone 75 feet below the surface.

During the history of groundwater sampling at the facility, the concentration of two VOCs detected in the former office well, Vinyl Chloride and cis-1,2-Dichloroethene, have exceeded their respective Montana Human Health Standards for Ground Water as listed in Circular DEQ-7, Montana Numeric Water Quality Standards. The health standard for Vinyl chloride is 0.2 $\mu\text{g/L}$ (micrograms per liter), and the maximum concentration detected at the landfill was 4.6 $\mu\text{g/L}$. The health standard for cis-1,2-Dichloroethene is 70 $\mu\text{g/L}$ and the maximum concentration detected at the landfill was 148 $\mu\text{g/L}$. Both of these maximums occurred in November 1998, and while concentrations currently are lower, Vinyl chloride concentrations remained above the health standard in June 2009 at 0.71 $\mu\text{g/L}$. The concentration of cis-1,2-Dichloroethene was below the health standard in June 2009 at 46 $\mu\text{g/L}$.

To determine if this contamination was limited to the well, as would be the case if the contamination was due to unclean sampling practices, or if it represented contamination of the surrounding Fall River Sandstone aquifer, the Department conducted a field test in June 2009. This test consisted of purging approximately 2000 gallons of water from the former office well over three consecutive days of pumping. Samples for analysis for VOCs were collected before and after the test. If contamination was limited to the former office well, a purge of this considerable volume should have resulted in a notable decrease in VOC concentrations, as the well bore of the former office well stores less than 40 gallons. The results of the sampling demonstrated the opposite: an increase in VOC concentrations after the test. This result indicates that the VOCs detected in the former office well most likely represent contamination of the Fall River Sandstone aquifer.

The solid waste management ground water rules, which are authorized by § 75-10-204(5), MCA, require that the monitoring network at a Class II landfill unit be sufficient to ensure detection of ground water contamination in the uppermost aquifer. See ARM 17.50.706(2)(a). The former office well is completed in the uppermost aquifer; however, because it was constructed as a water supply well for the landfill office, it was not constructed according to the monitoring well construction requirements in ARM 17.50.707. The substandard construction of the former office well makes samples collected from that well less precise and accurate than samples collected from a properly constructed monitoring well. Of critical importance at a landfill where contamination has been detected is the determination if the contamination has migrated beyond the Relevant Point of Compliance (RPOC), because this could require initiation of corrective

measures to remediate the contamination. Under ARM 17.50.710(1)(f), the RPOC is to be located "no more than 150 meters beyond the waste management unit boundary and on land owned by the owner of the disposal unit." In practice, the Department designates the RPOC at the maximum allowed point. This is 150 meters from the waste unit, or at the property boundary, whichever is closer to the waste unit. The former office well is located approximately 75 meters beyond the waste disposal unit boundary and 60 meters inside the facility property boundary; thus it is located well within the distance allowed for the RPOC. It has been used as the RPOC well in the absence of a well constructed according to monitoring well standards closer to the edge of the 150 meter maximum allowed for the RPOC. However, because of the location of the former office well, it is not useful to determine if contamination has migrated beyond the maximum allowed RPOC.

Because of the contamination of the Fall River Sandstone aquifer at the former office well and the substandard construction of the former office well, the Department has determined that this well is no longer adequate to be used as the RPOC well. Because of the location of the former office well inside the distance allowed for the RPOC the Department has determined that a new well installed as the RPOC well down-gradient of the former office well would be more protective of human health and the environment. The Department has also determined an appropriate location for the new RPOC well based on site hydrogeology. Previous studies have indicated that the direction of ground water flow in the Fall River Sandstone aquifer is approximately to the west-southwest; thus the new ground water monitoring well should be installed to the west-southwest of the former office well so as to intercept the VOC plume if it is present. The new ground water monitoring well should be located near the western facility property boundary approximately 20 meters northwest of current wells MW-1 and MW-8, and approximately 130 meters from the waste management unit boundary. Please see the map attached as Exhibit A. The well should to be approximately 70 feet deep to be completed in the Fall River Sandstone aquifer at the same elevation as the former office well.

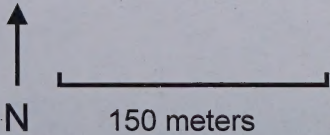
The Department also proposes to abandon wells MW-4, MW-7, and MW-8. These wells are completed at a shallow depth and rarely contain water, making them of little use for further ground water monitoring at the facility. Abandonment is required to seal off and plug a former well so that contaminants cannot move within the well bore between the surface and ground water or between different rock layers.

The Department would supervise the installation of the new well and the abandonment of wells MW-4, MW-7, and MW-8, which would be performed by a contracted licensed well driller. The new well would be constructed according to the requirements in ARM 17.50.707. Abandonment procedures are governed by ARM 17.50.722(1). Installation and abandonment of the wells would require access to the well locations with the drill rig truck and one or more support trucks. The well locations are all near existing facility access roads, thus minimal disturbance is expected from this access. The well drilling and abandonment would likely be completed in one or two days of work at the facility. I believe that the work should be done before snow falls, because it could interfere with the drilling and abandonment activities.

Costs for the installation of the new well and the abandonment of wells MW-4, MW-7, and MW-8 would be paid from the post-closure care fund established for the facility.

Exhibit A: Map of Mister M Facility

Base Air Photo from 2004



Hwy 87/200

